ADMINISTRATION'S DRAFT ANTI-TERRORISM ACT OF 2001

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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ADMINISTRATION'S DRAFT ANTI-TERRORISM ACT OF 2001

MONDAY, SEPTEMBER 24, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to call, at 2:02 p.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. On September 11, 2001, America was changed forever. Thousands of lives were taken from us, and millions of Americans lost their innocence on that day. We watched in horror as terrorists attacked us not once, but four times without provocation. We watched as they attacked the heart and soul of America by targeting institutions that protect our freedoms and vitalize our economy.

I have visited the sites and met many people whose lives have been tragically altered by these events. This past weekend I saw families and firefighters at the World Trade Center who are continuing to have hope that they still might find survivors of this attack. I saw the rubble and ruins of what was once a symbol of the strength of the American work ethic. I hope that I never again have to visit a site like that.

Today this Committee will hear from the Attorney General of the United States regarding the need for us to expeditiously pass legislation to give the Department of Justice and our intelligence community needed prime fighting tools. From my conversations with the Attorney General and other law enforcement officials, I believe that there is an unquestionable need for such legislation. In fact, I am convinced that our homeland security depends upon it. Consequently, I have been working with Ranking Member Conyers to come to an agreement on a bipartisan bill. To that end, majority and minority Committee staff have been working tirelessly to draft such a bill, and I am hopeful that agreement is near.

I believe that such legislation must enhance law enforcement's ability to send convicted terrorists to prison or place them under supervision for life. It must provide process changes and updates to investigative definitions in order to address new technologies, such as voice mail and disposable cell phones. It should also allow the FBI to attain a search warrant from one court to investigate crimes of terrorism, rather than requiring them to waste precious investigative time going to 94 different Federal judicial districts.

Of equal importance, this bill should not do anything to take away the freedom of innocent citizens. Of course, we all recognize

that the fourth amendment to the Constitution prevents the government from conducting unreasonable searches and seizures. That is why the legislation I hope to introduce shortly will not change the United States Constitution or the rights guaranteed to citizens of this country under the Bill of Rights.

I think it also is important to keep in mind that the Preamble to the Constitution states that that document was ordained, "to establish justice, ensure domestic tranquility, provide for the common defense and to promote the general welfare and to secure the blessings of liberty." Let me tell you on September 11, our common defense was penetrated, and America's tranquility, welfare and liberty were ruthlessly attacked. I urge the Members of this Committee to stand united together in recognition of the important purpose we must serve in preventing future terrorist attacks and prosecuting those who have already attacked us.

I also urge Members who have reservations about the Administration's proposal to listen closely to the Attorney General and to carefully examine the legislation that is subsequently introduced. I truly believe you will find it fair and balanced and designed to meet critical law enforcement needs.

Unfortunately, the threat of future terrorist attacks is real, and we must do our part to eliminate this threat before there is another devastating day like September 11, 2001. I welcome Attorney General Ashcroft here today to discuss the provisions of the Administration's law enforcement package and the important purpose they will serve in fighting terrorism in this country and abroad.

[The prepared statement of Mr. Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

On September 11, 2001, America was changed forever. Thousands of lives were taken from us and millions in America lost their innocence on that day. We watched in horror as terrorists attacked us not once, but four times without provocation. We watched as they attacked the heart and soul of America by targeting institutions that protect our freedoms and vitalize our economy.

I have visited the sites and met many people whose lives have been tragically altered by these events. This past weekend I saw families and firefighters at the World Trade Center who continue to have hope that they might still find survivors of this attack. I saw the rubble and ruins of what was once a symbol of the strength of the American work ethic. I hope that I never again have to visit a site like that.

Today, this Committee will hear from the Attorney General of the United States regarding the need for us to expeditiously pass legislation to give the Department of Justice and our intelligence community needed crime-fighting tools. From my conversations with the Attorney General and other law enforcement officials, I believe there is an unquestionable need for such legislation——in fact, I am convinced that our homeland security depends on it. Consequently, I have been working with ranking member Mr. Conyers to come to agreement on a bipartisan bill. To that end, majority and minority Committee staff have been working tirelessly to draft such a bill and I am hopeful that an agreement is near.

I believe such legislation must enhance law enforcement's ability to send convicted terrorists to prison or place them under supervision for life. It must provide process changes and updates to investigative definitions in order to address new technology such as voice mail and disposable cell phones.

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Of equal importance: the bill should not do anything to take away the freedoms of innocent citizens. Of course we all recognize that the 4th amendment to the Constitution prevents the government from conducting unreasonable searches and seizures—that is why the legislation I hope to introduce shortly will not change the

United States Constitution or the rights guaranteed to citizens of this country under the Bill of Rights.

I think it is also important to keep in mind that the preamble to the Constitution states that the Constitution was ordained to "establish justice, insure domestic tranquility, provide for the common defense, to promote the general welfare and to secure the blessings of Liberty."

Well, let me tell you, on September 11th our common defense was penetrated and America's tranquility, welfare and liberty were ruthlessly attacked. I urge the Members of this Committee to stand united together in recognition of the important purpose we must serve in preventing future terrorist attacks and prosecuting those who have already attacked us.

I also urge members who have reservations about the Administration's proposal to listen closely to the Attorney General and to carefully examine the legislation that is subsequently introduced. I truly believe you will find it fair and balanced and designed to meet critical law enforcement needs. Unfortunately, the threat of future terrorist attacks is real and must do our part to eliminate this threat before there is another devastating day like September 11, 2001.

I welcome Attorney General Ashcroft here today to discuss the provisions of the Administration's law enforcement package and the important purpose they will serve in fighting terrorism in this country and abroad.

Chairman SENSENBRENNER. In the absence of Mr. Conyers, I ask unanimous consent that his opening statement be placed in the record. Without objection, so ordered.

Chairman SENSENBRENNER. The way we will proceed today is the Attorney General is only here until 3 o'clock, and then he has other engagements. After his prepared remarks, I would like to split the remaining time between then and 3 o'clock between myself and Mr. Conyers equally to be yielded to Members on both sides.

Mr. Thompson, the Deputy Attorney General, will be able to spend an extra half hour, and Mr. Dinh and Mr. Chertoff, Mr. Chertoff being the head of the Criminal Division, an extra hour. So after the Attorney General has left, we will proceed under the 5-minute rule for questioning of the remaining officials of the Justice Department, and, without objection, that will be the order.

Now, Mr. Attorney General, would you kindly introduce the members of your team, and then will each of you stand to be sworn in.

Attorney General ASHCROFT. Thank you, Mr. Chairman. I'm pleased to have with me the Assistant Attorney General in the Justice Department for the Criminal Division, Michael Chertoff, who is on my left. On my right is the Deputy Attorney General of the United States of America, Mr. Larry Thompson. And to his right is Viet Dinh, who is the Assistant Attorney General for Legal Policy. I'd be pleased now to take the oath.

Chairman SENSENBRENNER. Please raise your right hand.

[Witnesses sworn.]

Chairman SENSENBRENNER. Let the record show that each of the witnesses have answered in the affirmative.

Mr. Attorney General, the floor is yours.

TESTIMONY OF JOHN ASHCROFT, UNITED STATES ATTORNEY GENERAL, ACCOMPANIED BY LARRY D. THOMPSON, DEPUTY ATTORNEY GENERAL; MICHAEL CHERTOFF, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION; AND VIET DINH, ASSISTANT ATTORNEY GENERAL FOR LEGAL POLICY

Attorney General ASHCROFT. Mr. Chairman, thank you for the opportunity to appear before this Committee to discuss America's response to the criminal act of war perpetrated on the United

States of America on September 11. Mr. Chairman and Members of the Committee, the American people do not have the luxury of unlimited time in erecting the necessary defenses to future terrorist acts. The danger that darkened the United States of America and the civilized world on September 11 did not pass with the atrocities committed that day. They require that we provide law enforcement with the tools necessary to identify, dismantle, disrupt and punish terrorist organizations before they strike again.

Terrorism is a clear and present danger to Americans today. Intelligence information available to the FBI indicates a potential for additional terrorist incidents. As a result, the FBI has requested through the national threat warning system that all law enforcement agencies nationwide be on heightened alert.

When we have threat information about a specific target, we share that information with appropriate State and local authorities. We have contacted several city and State officials over the last 13 days to alert them to potential threats. We also act on intelligence information to neutralize potential terrorist attacks using specific methods.

Yesterday the FBI issued a nationwide alert based on information they received indicating the possibility of attacks using crop-dusting aircraft. The FBI assesses the uses of this type of aircraft to distribute chemical or biological weapons of mass destruction as potential threats to Americans. We have no clear indication of the time or place of any such attack.

The FBI has confirmed that Mohammed Atta, one of the suspected hijackers, was acquiring knowledge of crop-dusting aircraft prior to the attacks on September 11th. A search of computers, computer disks and personal baggage of another individual whom we have in custody revealed a significant amount of information downloaded from the Internet about aerial application of pesticides or crop-dusting. At our request, the Federal Aviation Administration has grounded such aircraft until midnight tonight. In addition to its own preventative measures, the FBI has strongly recommended that State and local and other Federal law enforcement organizations take steps to identify crop-dusting aircraft in their jurisdictions and ensure that they are secure. I also urge Americans to notify immediately the FBI of any suspicious circumstances that may come to their attention regarding crop-dusting aircraft or any other possible terrorist threat.

The FBI Web site is www.ifccfbi.gov—pardon me, .org. That's www.ifccfbi.org. Our toll-free telephone number is 866–483–5137. 866—that's toll free. 866–483–5137.

The highly coordinated attacks of September 11 make it clear that terrorism is the activity of expertly organized, highly coordinated and well-financed organizations and networks. These organizations operate across borders to advance their ideological agendas. They benefit from the shelter and protection of like-minded regimes. They are undeterred by the threat of criminal sanctions, and they are willing to sacrifice the lives of their members in order to take the lives of innocent citizens of free nations.

This new terrorist threat to Americans on our soil is a turning point in American history. It's a new challenge for law enforcement. Our fight against terrorism is not merely or primarily a

criminal justice endeavor. It is defense of our Nation and its citizens. We cannot wait for terrorists to strike to begin investigations and to take action. The death tolls are too high, the consequences too great. We must prevent first. We must prosecute second.

The fight against terrorism is now the highest priority of the Department of Justice. As we do in each and every law enforcement mission we undertake, we are conducting this effort with the total commitment to protect the rights and privacy of all Americans and the constitutional protections we hold dear.

In the past when American law enforcement confronted challenges to our safety and security from espionage, drug trafficking and organized crime, we've met those challenges in ways that preserve our fundamental freedoms and civil liberties. Today we seek to meet the challenge of terrorism within our borders and targeted at our friends and neighbors with the same careful regard for the constitutional rights of Americans and respect for all human beings. Just as American rights and freedoms have been preserved throughout previous law enforcement campaigns, they must be preserved throughout this war on terrorism.

This Justice Department will never waiver in its defense of the Constitution nor relent in our defense of civil rights. The American spirit that rose from the rubble in New York knows no prejudice and defies division by race, ethnicity or religion.

The spirit which binds us and the values that define us will light Americans' path from this darkness. At the Department of Justice, we are charged with defending American's lives and liberties, and we are asked to wage war against terrorism within our own borders. Today we seek to enlist your assistance, for we seek new laws against America's enemies, foreign and domestic.

As the Members of this Committee understand, the deficiencies in our current laws on terrorism reflect two facts. First, our laws fail to make defeating terrorism a national priority. Indeed, we have tougher laws against organized crime and drug trafficking than terrorism. Second, technology has dramatically outpaced our statutes. Law enforcement tools created decades ago were crafted for rotary telephones, not e-mail, the Internet, mobile communications and voice mail. Every day that passes with outdated statutes and the old rules of engagement, each day that so passes is a day that terrorists have a competitive advantage. Until Congress makes these changes, we are fighting an unnecessarily uphill battle.

Members of the Committee, I regret to inform you that we are today sending our troops into the modern field of battle with antique weapons. It is not a prescription for victory. The antiterrorism proposals that have been submitted by the Administration represent careful, balanced, long overdue improvements to our capacity to combat terrorism. It is not a wish list. It is a modest set of proposals, essential proposals, focusing on five broad objectives, which I will briefly summarize.

First, law enforcement needs a strengthened and streamlined ability for our intelligence-gathering agencies to gather the information necessary to disrupt, weaken and eliminate the infrastructure of terrorist organizations.

Critically, we also need the authority for our law enforcement to share vital information with our national security agencies in order to prevent further terrorist and future terrorist attacks. Terrorist organizations have increasingly used technology to facilitate their criminal acts and hide their communications from law enforcement. Intelligence-gathering laws that were written for an era of land-line telephone communications are ill-adapted for use in communications over multiple cell phones and computer networks, communications that are also carried by multiple telecommunications providers located in different jurisdictions.

Terrorists are trained to change cell phones frequently, to route e-mail through different Internet computers in order to defeat surveillance. Our proposal creates a more efficient, technology-neutral standard for intelligence gathering, ensuring law enforcement's ability to trace the communications of terrorists over cell phones, computer networks and the new technologies that may be developed in the years ahead. These changes would streamline intelligence-gathering procedures only. We do not seek changes in the underlying protections in the law for the privacy of law-abiding citizens. The information captured by the proposed technology-neutral standard would be limited to the kind of information you might find in a phone bill, such as the phone numbers dialed by a particular telephone. The content of these communications in this setting would remain off limits to monitoring by intelligence authorities, except under the current legal standards where content is available under the law which we now use.

Our proposal would allow a Federal court to issue a single order that would apply to all providers in the communications chain, including those outside the region where the court is located. We need speed in identifying and tracking down terrorists. Time is of the essence. The ability of law enforcement to trace communications into different jurisdictions without obtaining an additional court order can be the difference between life and death for American citizens. We're not asking the law to expand, just to grow as technology grows. This information has historically been available when criminals used predigital technologies. This same information should be available to law enforcement officials today.

Second, we must make fighting terrorism a national priority in our criminal justice system. In a speech to the Congress, President Bush said that Osama bin Laden's terrorist group al Qaeda is to terror what the Mafia is to organized crime. However, our current laws make it easier to prosecute members of organized crime than to crack down on terrorists who can kill thousands of Americans in a single day.

The same is true of drug traffickers and individuals involved in espionage. Our laws treat these criminals and those who aid and abet them more severely than our laws treat terrorists.

We would make harboring a terrorist a crime. Currently, for instance, harboring persons engaged in espionage is a specific criminal offense, but harboring terrorists is not. Given the wide terrorist network suspected of participating in the September 11 attacks, both in the United States and in other countries, we must punish anyone who harbors a terrorist. Terrorists can run, but they should have no place to hide.

Our proposal also increases the penalties for conspiracy to commit terrorist acts to a serious level, as we have done for many drug crimes.

Third, we seek to enhance the authority of the Immigration and Naturalization Service to detain or remove suspected alien terrorists from within our borders. The ability of alien terrorists to move freely across our borders and operate within the United States is critical to their capacity to inflict damage on our citizens and facilities. Under current law, the existing grounds for removal of aliens for terrorism are limited to direct material support of an individual terrorist. We propose to expand these grounds for removal to include material support to terrorist organizations. We propose that any alien who provides material support to an organization that he or she knows or should know is a terrorist organization should be subject to removal from the United States.

Fourth, law enforcement must be able to follow the money in order to identify and neutralize terrorist networks. Sophisticated terrorist operations require substantial financial resources. On Sunday evening President Bush signed a new Executive Order under the International Emergency Economic Powers Act, IEEPA, blocking the assets of and the transactions of individuals and organizations with terrorist organizations and other business operations that support terrorism. President Bush's new Executive Order will allow intelligence, law enforcement and financially—financial regulatory agencies to follow the money trail to the terrorists and to freeze the money to disrupt their actions. This Executive Order means that the United States' banks that have assets of these groups or individuals must freeze their accounts, and United States citizens or businesses are permitted—prohibited from doing business with those accounts.

At present the President's powers are limited to freezing assets and blocking transactions with terrorist organizations. We need the capacity for more than a freeze. We must be able to seize. Doing business with terrorist organization must be a losing proposition. Terrorists financiers must pay a price for their support of terrorism which kills innocent Americans.

Consistent with the President's action yesterday and his statements this morning, our proposal gives law enforcement the ability to seize the terrorists' assets. Further, criminal liability is imposed on those who knowingly engage in financial transactions, money laundering involving the proceeds of terrorist acts.

Finally, we seek the ability for the President of the United States and the Department of Justice to provide swift emergency relief to the victims of terrorists and their families.

Mr. Chairman, I want you to know that the investigation into the act of September 11 is ongoing, moving aggressively forward. To date, the FBI and INS have arrested or detained 352 individuals who remain—there are other individuals, 392 who remain at large, because we think they have—and we think they have information that could be helpful to the investigation. The investigative process has yielded 324 searches, 103 court orders, 3,410 subpoenas, and the potential tips are still coming into the Web site and the 1–800 hotline. The Web site has received almost 80,000 potential tips; the hotline, almost 15,000.

Now it falls to us in the name of freedom and those who cherish it to ensure our Nation's capacity to defend ourselves from terrorists. Today I urge the Congress—I call upon the Congress to act, to strengthen our ability to fight this evil wherever it exists, and to ensure that the line between the civil and the savage, so brightly drawn on September 11, is never crossed again.

Chairman SENSENBRENNER. Thank you very much, Mr. Attorney General. At this point, without objection, all Members have heard the statements, and that of the Attorney General will be included in the record.

[The prepared statement of Mr. Ashcroft follows:]

Testimony
Attorney General John Ashcroft
House Committee on the Judiciary
September 24, 2001

Mr. Chairman, thank you for the opportunity to appear before this committee to discuss the nation's response to the criminal act of war perpetrated on the United States of America on September 11.

Thank you, Chairman Sensenbrenner and Ranking Member Conyers, for your expeditious consideration of changes in the law to give law enforcement the tools we need to fight terrorism. I know that you and other members of the committee worked through the weekend to prepare for this hearing. For that, as well as the cooperation you've demonstrated throughout this time of national need, I am very grateful.

In his address to Congress and the nation last Thursday, President Bush declared war on terrorism and announced the United States will direct every resource at our command to victory in this war. As Attorney General, it is my duty to respond to this call to action by ensuring the capacity of United States law enforcement to perform two related critical tasks: First, prevent more terrorism, and second, to bring terrorists to justice.

Mr. Chairman and members of the committee, the American people do not have the luxury of unlimited time in erecting the necessary defenses to future terrorist acts. The danger that darkened the United States of America and the civilized world on September 11 did not pass with the atrocities committed that day. It requires that we provide law enforcement with the tools necessary to identify, dismantle, disrupt and punish terrorist organizations, before they strike again. Terrorism is a clear and present danger to Americans today.

At our request, the Federal Aviation Administration has grounded such aircraft until midnight tonight. In addition to its own preventative measures, the FBI has strongly recommended that state, local and other federal law enforcement organizations take steps to identify crop dusting aircraft in their jurisdictions and ensure that they are secured.

I also urge Americans to notify immediately the FBI of any suspicious circumstances that may come to your attention regarding crop dusting aircraft or any other possible terrorist threat. The FBI website is www.ifccfbi.org. Our toll-free telephone number is 866-483-5137.

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sanctions. And they are willing to sacrifice the lives of their members in order to take the lives of innocent citizens of free nations.

This new terrorist threat to Americans on our soil is a turning point in America's history. It is a new challenge for law enforcement. Our fight against terrorism is not merely or primarily a criminal justice endeavor -- it is defense of our nation and its citizens. We cannot wait for terrorists to strike to begin investigations and make arrests. The death tolls are too high, the consequences too great. We must prevent first, prosecute second.

The fight against terrorism is now the highest priority of the Department of Justice. As we do in each and every law enforcement mission we undertake, we are conducting this effort with a total commitment to protect the rights and privacy of all Americans and the Constitutional protections we hold dear.

In the past, when American law enforcement confronted challenges to our safety and security from espionage, drug trafficking and organized crime, we met those challenges in ways that preserved our fundamental freedoms and civil liberties.

Today we seek to meet the challenge of terrorism within our borders and targeted at our friends and neighbors with the same careful regard for the Constitutional rights of Americans and respect for all human beings. Just as American rights and freedoms have been preserved throughout previous law enforcement campaigns, they must be preserved throughout this war on terrorism.

Americans were attacked September 11 by an enemy who does not seek territory, nor resources, nor material gain. As Americans, we were attacked for our beliefs. Our beliefs in freedom, in equality before the law, and in the right of all men and all women to reach the maximum of the potential that God has placed within them. We were attacked because we have a deep abiding commitment to fairness, respect for privacy, and dedication to individual freedoms. We were attacked for our nation's values. We will not now allow our values to become victims.

This Justice Department will never waiver in our defense of the Constitution nor relent our defense of civil rights. The American spirit that rose from the rubble in New York knows no prejudice and defies division by race, ethnicity or religion. The spirit which binds us and the values that define us will light America's path from this darkness.

At the Department of Justice, we are charged with defending Americans' lives and liberties. We are asked to wage war against terrorism within our own borders. Today, we seek to enlist your assistance, for we seek new laws against America's enemies, foreign and domestic.

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dramatically outpaced our statutes. Law enforcement tools created decades ago were crafted for rotary telephones – not email, the internet, mobile communications and voice mail.

Every day that passes with outdated statutes and the old rules of engagement is a day that terrorists have a competitive advantage. Until Congress makes these changes, we are fighting an unnecessarily uphill battle. Members of the Committee, I regret to inform you that we are today sending our troops into the modern field of battle with antique weapons. It is not a prescription for victory.

The anti-terrorism proposals that have been submitted by the Administration represent careful, balanced, and long overdue improvements to our capacity to combat terrorism. It is not a wish list: It is a modest set of essentials, focusing on five broad objectives, which I will briefly summarize.

First, law enforcement needs a strengthened and streamlined ability for our intelligence gathering agencies to gather the information necessary to disrupt, weaken and eliminate the infrastructure of terrorist organizations. Critically, we also need the authority for law enforcement to share vital information with our national security agencies in order to prevent future terrorist attacks.

Terrorist organizations have increasingly used technology to facilitate their criminal acts and hide their communications from law enforcement. Intelligence gathering laws that were written for the era of land-line telephone communications are ill-adapted for use in communications over multiple cell phones and computer networks -- communications that are also carried by multiple telecommunications providers located in different jurisdictions.

Terrorists are trained to change cell phones frequently and to route email through different internet computers in order to defeat surveillance. Our proposal creates a more efficient, technology-neutral standard for intelligence gathering, ensuring law enforcement's ability to trace the communications of terrorists over cell-phones, computer networks and new technologies that may be developed in the coming years.

These changes would streamline intelligence gathering procedures only. We do not seek changes in the underlying protections in the law for the privacy of law-abiding citizens. The information captured by the proposed technology-neutral standard would be limited to the kind of information you might find in a phone bill, such as the phone numbers dialed by a particular telephone. The content of these communications would remain off-limits to monitoring by intelligence authorities, except for under current legal standards.

Our proposal would allow a federal court to issue a single order that would apply to all providers in a communications chain, including those outside the region where the court is located. We need speed in identifying and tracking down terrorists. Time is of the essence. The ability of law enforcement to trace communications into different jurisdictions without obtaining an additional court order can be the difference between life and death for American citizens.

We are not asking the law to expand, just to grow as technology grows. This information has historically been available when criminals used pre-digital technologies.

Second, we must make fighting terrorism a national priority in our criminal justice system.

In his speech to Congress, President Bush said that Osama bin Laden's terrorist group, Al Qaeda, is to terror what the mafia is to organized crime. However, our current laws make it easier to prosecute members of organized crime than to crack down on terrorists who can kill thousands of Americans in a single day. The same is true of drug traffickers and individuals involved in espionage – our laws treat these criminals and those who aid and abet them more severely than terrorists.

The statute of limitations on prosecuting the types of crimes that are likely to be committed by terrorists, for example, is five to eight years. The crimes of murder and espionage, in contrast, have no statute of limitations. We would eliminate the statute of limitations on terrorist acts.

We would make harboring a terrorist a crime. Currently, for instance, harboring persons engaged in espionage is a criminal offense, but harboring terrorists is not. Given the wide terrorist networks suspected of participating in the September 11 attacks – both in the United States and in other countries – we must punish anyone who harbors a terrorist. Terrorists can run, but they should have no place to hide. Our proposal also increases the penalties for conspiracy to commit terrorist acts to a serious level as we have done for many drug crimes.

Third, we seek to enhance the authority of the Immigration and Naturalization Service to detain or remove suspected alien terrorists from within our borders.

The ability of terrorists to move freely across borders and operate within the United States is critical to their capacity to inflict damage on the citizens and facilities in the United States. Under current law, the existing grounds for removal of aliens for terrorism are limited to direct material support of an individual terrorist. We propose to expand these grounds for removal to include material support to terrorist organizations.

We propose that any alien who provides material support to an organization that he or she knows or should know is a terrorist organization should be subject to removal from the United States.

Fourth, law enforcement must be able to "follow the money" in order to identify and neutralize terrorist networks. Sophisticated terrorist operations require substantial financial resources. On Sunday evening, President Bush signed a new Executive Order under the International Emergency Economic Powers Act (IEEPA) blocking the assets of, and transactions with, terrorist organizations and other business organizations that support terrorism. President Bush's new executive order will allow the intelligence, law-enforcement and financial regulatory agencies to follow the money trail to the terrorists and to freeze the money to disrupt their actions. This executive order means that United States banks that have assets of these groups or individuals must freeze their accounts. And United States citizens or businesses are prohibited from doing business with them.

At present, the President's powers are limited to freezing assets and blocking transactions with terrorist organizations. We need the capacity for more than a freeze. We must be able to seize. Doing business with a terrorist organization must be a losing proposition. Terrorist financiers must pay a price for their support of terrorism, which kills innocent Americans.

Consistent with the President's action yesterday and his statement this morning, our proposal gives law enforcement the ability to seize their terrorist assets. Further, criminal liability is imposed on those who knowingly engage in financial transactions – money laundering – involving the proceeds of terrorist acts.

Finally, we seek the ability for the President and the Department of Justice to provide swift emergency relief to the victims of terrorism and their families.

Mr. Chairman, I want you to know that the investigation into the acts of September 11 is ongoing and moving aggressively forward. To date, the FBI and INS have arrested or detained 352 individuals. We are interested in talking to 392 individuals who remain at large because we think they may have information helpful to the investigation. The investigative process has yielded 324 searches, 103 court orders, and 3410 subpoenas. And the potential tips are still coming in to the website and the 1-800 hotline. The website has received 78,125 potential tips and the hotline has received 14,299 phone calls. I have said before and I cannot emphasize enough, this is the largest investigation ever undertaken by the Justice Department and its component agencies.

Ladies and gentlemen of the Judiciary Committee, the attacks of September 11 drew a bright line of demarcation between the civil and the savage, and our nation will never be the same. On one side of this line are freedom's enemies, murderers of innocents in the name of a barbarous cause. On the other side are friends of freedom; citizens of every race and ethnicity, bound together in quiet resolve to defend our way of life.

Among the high honors of my life has been the opportunity I have had over the past days and weeks to be in the company of these heroes, these friends of freedom; to meet with and work side-by-side with men and women who have exerted themselves beyond fatigue, who have set aside their own personal agendas and their personal safety to answer our nation's call. The nation has found new leaders – and new role models – in these brave Americans.

Now it falls to us, in the name of freedom and those who cherish it, to ensure our nation's capacity to defend ourselves from terrorists. Today I call upon Congress to act to strengthen our ability to fight this evil wherever it exists, and to ensure that the line between the civil and the savage, so brightly drawn on September 11, is never crossed again.

Chairman SENSENBRENNER. There are 35 minutes left before you have to leave; that means 17½ minutes available on each side. And I recognize the gentleman from Michigan.

Mr. CONYERS. Well, I thank you, Mr. Chairman. You're recognizing me for the purpose of making an introductory statement as you did; is that not correct?

Chairman SENSENBRENNER. You can use your 17½ minutes however you want.

Mr. CONYERS. Well, that's not exactly the question, sir. In this Committee a process that started even before you arrived, we—the Ranking Member and the Chairman customarily have 5 minutes each, and I do not want my 5 minutes coming out of the time for 16 Members of this Committee to divide 17 minutes, and we ought to get that straight right now.

Chairman SENSENBRENNER. Okay. The gentleman is recognized for 5 minutes, but the Attorney General has to leave at 3 o'clock. So that will reduce the time on each side to 15 minutes.

Mr. CONYERS. Well, it may, or it may not.

I want to just welcome the Attorney General, Mr. John Ashcroft, and the Deputy Attorney General, Mr. Larry Thompson. Mr. Chertoff and Mr. Dinh, we welcome you to these Committee proceedings.

And notwithstanding the opening comments that I made, I want to report to you that myself and the Chairman of this Committee, Mr. Jim Sensenbrenner, have been working very closely together. As a matter of fact, different Members on both sides of this Committee, Democrats and Republicans, have been working over the weekend, as our staffs have, and as we know you have as well.

Attorney General ASHCROFT. Well, we are grate—pardon me. We are grateful for that, and we are aware of the time that our staff has spent with yours, and we appreciate the cooperative relationship.

Mr. CONYERS. I thank you very much, and I just want you to know that there is not a Member on this Committee that is not pressed and committed to urgently produce the kinds of additional legislation that is needed for this country and particularly for the Office of the Attorney General to prosecute the tremendously important mission that is confronting you at this moment.

We're coming to grips with the tragic events that have occurred since September 11. The country appears more unified than ever to confront the problem that we're presented here in the United States in the year 2001. But today we're here to review the Attorney General's emergency request for new authorities to combat terrorism, and I am gratified to report that the Minority Leader of this House, Mr. Richard Gephardt, who is working, incidentally, very closely with the Speaker, Mr. Hastert, and we have been reporting to him the progress and the activities going on on the Judiciary Committee, which has such a large responsibility in the legislative requests that you have made. And it's to these points I would like to bring to your attention how we're going to proceed, or how I hope we'll proceed.

First of all, there has been a great deal of consensus forming around a number of the provisions in your proposal that you've presented to us recently. As a matter of fact, I can state that we on this side of the aisle, 16 of us in number, have agreed to ironically 16 of the provisions within your proposal, 16 of them. They're before our drafting Committee, being put into a bill as we speak.

Now, we're working hard. We're willing to burn the midnight oil, but it's hard for me to understand how if the proposal offered by our friend, the Chairman from this Committee, Mr. Sensenbrenner—how we will be able to employ a 10 a.m. markup on a proposal that has never been explained before the Members. These—and talked with among ourselves. In other words, we're at close agreement, Mr. Ashcroft, but we've got to see the writing, and we've made some small changes, but I think that there are Members on both sides of this Committee, Democrats and Republicans alike, who are prepared to move on 16 of these proposals incorporated in the draft of ideas that you've presented us with, and I

hope that we'll be able to do that. It would expedite everything that we're doing quite rapidly.

But I think that you must also take into cognizance that there are a number of provisions in your measure that give us constitutional trouble. Our lawyers, our witnesses that will follow you today from the American Civil Liberties Union and several other university organizations, are very deeply concerned and troubled about the fact that the court has already, for example, told us that indefinite detention is unconstitutional. We've got to get these guys, but indefinite detention has not been allowed by the courts up 'til now. So we know, without too much other discussion, that we may have some problems here on this issue. And feel free to address any of the comments that I'm making as soon as I conclude.

Permitting information for illegal wiretaps performed abroad against United States citizens to be used in the Federal courts, as the Administration proposals—proposes, is—well, some have said it's unconstitutional on its face. Let me be more polite. We're deeply troubled. We're deeply troubled by it. And there are at least a half dozen other sections that I don't even know how I'm going to go on them until I've discussed it with the distinguished Members of this Committee and witnesses that we will be calling forward.

So what I want to assure you is that at the same time that we want to rearm you with the tools that you need, and know that at the same time you're conducting the fight already, you can't wait for this legislation, I want to assure you that this Committee is doing everything that it can possibly do to expedite that happening.

Now, know that the United States Senate has already indicated that they may be weeks away from a resolution. I'm not trying to slow you down, but there's no point in us trying to mark up a measure that we agree on tomorrow morning if it hasn't come from the printer, and we already know that the U.S. Senate Judiciary Committee under the esteemed Chairman Leahy has already indicated that they're talking about weeks. So this is a discussion between friends of how we get all this together and move forward in the manner that you've described to us. And I thank you for your kind attention.

Chairman SENSENBRENNER. Mr. Attorney General, the floor is yours. Do you wish to respond?

Attorney General ASHCROFT. Well, frankly, I don't know that I—it might be better to allow different Members to ask specific questions. I do want to recognize the fact that over the course of the last maybe 10 days, I've been working with individuals from the Minority Leader of the House to the Committee Chairman in the Senate. We've had lots of time together. The Ranking Member and I have spent time together. The Chairman and I have spent time together. We've invited the leadership of Committees of both Houses to confer with us about this measure, and we—we believe that this is a measure that should—that is the result of collaborative effort and work, and so there is reason for us to have substantial agreements.

In regard to the areas where there are disagreements, I must say that we are confident that we have carefully considered those, that they are merited not only by the circumstances, but that they pass constitutional muster, and that they will serve America well.

I would just indicate that in regard to the pace of things, I think this is a time for leadership. I think we would be ill-advised to find a reason that someone else might be slowing down and indicate that we didn't understand the urgency that was appropriate to the ability to protect the American people. It's our position at the Justice Department and the position of this Administration that we need to unleash every possible tool in the fight against terrorism and to do so promptly, because our awareness indicates that we are vulnerable and this, our vulnerability, is elevated as long as we don't have the tools we need to have.

Chairman SENSENBRENNER. Mr. Attorney General, let me say that I am very strongly opposed to breaking this bill apart into several pieces. There are some easy provisions in your submission, and there are some difficult provisions. I think when we get the information, we should make a decision on the difficult provisions and let the Committee procedure in the House of Representatives work its will.

Let me also state that I have never been guided by how fast or how slow the Senate wants to work. I know that you are an alumnus of that esteemed body, but sometimes they have much more difficulty making up their mind than we do.

The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. I thank the Chair.

We welcome you of course, General.

Attorney General ASHCROFT. Thank you.

Mr. GEKAS. You stated as part of your presentation that pursuant to an Executive Order issued by the President the other night, that certain actions are being taken to freeze assets, et cetera. Today the President announced a separate Executive Order, I believe, that is aimed toward charitable organizations or front organizations that could be funneling monies to terrorist organizations. I'm wondering—I think this was aimed toward ostensibly a charitable organization, and the President wants that money blocked. And I agree with him. I think most of us do. The question is, if the donor believes that it truly is going for a hospital, but another arm of this organization is dealing with dynamite and terrorist activities, that that person should be absolved from any complicity in that.

My position is that every dollar that is given to a so-called charity frees up monies that could be used for terrorist activities. I am wondering how you feel about this particular Executive Order and in the context of what we're trying to prepare here.

Attorney General ASHCROFT. Well, thank you very much, Congressman Gekas. Our measure does seek to remedy a problem here, and let me just speak of it in two ways. Front organizations, so-called NGOs, advertise themselves as charitable organizations, but frequently divert very substantial assets to the perpetration of terrorist acts or the maintenance of terrorist networks. We need to be able to curtail the resources of those organizations. The President has taken the step to do so.

The President's step is to freeze the assets of those organizations. Now, when we encounter criminal organizations in the United States, like drug trafficking, we don't just freeze assets. We seize assets, and we are in our legislation seeking to be able to seize the

assets, not just to freeze them, not just to curtail activity, but to take those assets.

Number two, you mentioned if someone thinks they're giving to a charity, I think this is a serious question, but for individuals, in our proposal, who know or should know, in other words, the evidence is clear, and there's reason to know that this is not really a charity, that this is a front organization, then the responsibility would attach to such individuals.

So we're concerned on two fronts that what the President now has the capacity to do is to freeze the assets. We think that capacity should be elevated to the way the law enforcement deals with the assets of drug dealers and the like, to seize the assets. And secondly, we think the standards should be actual knowledge or should have known. That's a pretty high standard, but we don't want people to be responsible if they actually thought they were giving—appropriately thought they were giving to a charity.

Mr. GEKAS. But if they did know or had reason to know, then we would——

Attorney General ASHCROFT. We should act against them.

Mr. GEKAS. That deportability enters into the picture?

Attorney General ASHCROFT. Yes.

Mr. GEKAS. Sanctions.

Attorney General ASHCROFT. Yes.

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. GEKAS. Can I inquire of the Chair how much time——

Chairman SENSENBRENNER. Well, we're operating under—you know, yielding of time equally on each side until the Attorney General departs.

Mr. GEKAS. Yes.

Chairman SENSENBRENNER. The gentleman from Michigan, to whom do you yield time?

Mr. CONYERS. Thank you, Mr. Chairman. I yield now to the senior Member of the Committee, the gentleman from Massachusetts, Mr. Barney Frank.

Chairman SENSENBRENNER. The gentleman is recognized.

Mr. FRANK. General, on one the procedural point, you submitted legislation, I guess, last week, which represented your best effort. And no one's good will is in question here. We're all trying very hard to do jobs that, frankly, none of us feel fairly adequate to do. This is a terrible task that none of us ever contemplated having to do when we got here, and we're doing our best. And I think it's a time when the collective wisdom is very likely to be better by far than what any one of us could do. I certainly benefited from that.

The only point I would make is this: You have agreed, and the Majority and Minority have agreed to several changes that have, in my judgment, greatly improved the bill, A very effective law enforcement effort, while diminishing some of the concerns we would have had, and we've been able to do that by working together between Thursday and today. Another week would make it do even better.

It's no criticism of your work product to know that no one can excogitate the perfect bill here, and working together helped. We've already been able to make some improvements and enhance the area of agreement. I would ask urgently for another week to be

able to do more of that rather than have us rush to a premature markup tomorrow.

And now let me just ask you a couple of substantive questions. I think it is essential that we upgrade our law enforcement capacity. Technology has changed, and we have a set of fiendishly skillful set of opponents, and we have to arm law enforcement. But we are aware of our own fallibility. I think every time we increase law enforcement's efficacy, as I want to do in many cases, we need to make sure the safeguards are there for those cases when we can make the mistakes.

First, with regard to increased surveillance, and I'm going to support increased surveillance to keep up with new electronic deals, but one of the problems we've seen historically is the inappropriate release of information garnered by surveillance, and one of the worst instances in history was the savage campaign of defamation waged by J. Edgar Hoover as head of the FBI against Dr. Martin Luther King, taking information he gained from surveillance; having found nothing criminal, nothing subversive, nothing incriminating, he released inappropriately personal and intimate information.

I hope we will have in this bill a right for any individual about whom such information is released in a context other than the criminal or intelligence investigation, the right to go into Federal court under the Federal Tort Claims Act before a Federal judge and get damages from the Federal Government. We have got to build into this a bureaucratic departmental incentive to crack down on this kind of leaking, and I think if we are able to ensure people that we have done the maximum to prevent the inappropriate disclosure of this information, there is less concern about being gathered.

Similarly, with regard to asset forfeiture, yes, there will be times when we've got to get the assets. I hope we will have in this bill procedures that are as prompt and people whose assets were being taken having a chance to get them back, because we're never going to do it perfectly. You know we're going to take some assets we shouldn't take, and the former Chairman of this Committee, the gentleman from Georgia, the gentleman from Michigan and I collaborated on a bill dealing with asset forfeiture in general. So in both cases, if you're going to get increased surveillance, you're going to get it, let's do the maximum. And I don't want to say, oh, it's a criminal offense only if someone leaks, because the likelihood of that criminal prosecution being successful against the law enforcement person before a jury probably isn't that great. I want a citizen to be able to go under the Federal Tort Claims Act against the Federal entity that had that information and sue and get damages fairly easily, because we've got to get that disincentive along with other factors.

Secondly, I want there to be in areas, for instance, such asset procedure, as promptly as you can seize the assets, equally promptly an individual who has reason to argue that he was inappropriately the victim of that ought to be able to come back in. And, frankly, it's to be able to work these out to our mutual satisfaction if we have an agreement, But I think we need more time. I'd be glad to get a response.

Attorney General ASHCROFT. Well, in regard to the asset seizure, I believe all the safeguards that you sought to—and put into the law last year would apply in settings like this. So to the extent that those are effective and work as well as we worked to develop those, they would operate in this setting.

Mr. FRANK. What about the release of information, because that's really been where we've had historically a pattern of abuse in the past, information gained for investigative purposes or intelligence purposes being inappropriately disclosed by our law enforcement people.

Attorney General ASHCROFT. I think the inappropriate leakage of classified information and information that is the product of these kinds of endeavors is a crime, and I know that there haven't been a lot of prosecutions in that respect, but that's—this proposal does not include private cause of action.

Mr. FRANK. Well, I would say, yes, it's been a crime. As you know, the Administration has been talking about and others have been talking about broadening that for information in general.

I will close with this. I don't want to broaden it for information in general, but——

Chairman SENSENBRENNER. At the suggestion of the gentleman from Michigan, the gentleman from Massachusetts' time is expired.

Mr. FRANK. I want to say the individual ought to get that protection.

Chairman SENSENBRENNER. The gentleman from North Carolina Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

General, two quick questions. The Administration's bill includes provisions for the prosecution of certain computer crimes as terrorist offenses. What about this type of offense that makes it necessary to include them in the definition of terrorism, A? And, B, Mr. Attorney General, hypothetical question applying hindsight. Is it your belief that we could have possibly prevented this—these events of September 11 if the government had the authority that the Administration is requesting in this legislation?

Attorney General ASHCROFT. Well, I thank the Congressman.

First, to the question as to whether computer crimes could rise to the level of or could be categorized as terrorist acts, when you think about the utilization of computers in terms of air traffic control, you can imagine the chaos that could come from the disruption of that system if we had an assault launched through a computer virus or some other infection in the computer infrastructure, not to mention other very serious controls in our culture that relate to other infrastructure, whether it be power grids, power generation supplies and the like.

Mr. COBLE. Yeah. I wanted that on the record, General, because some folks might think that was too far-reached. I just wanted it on the record.

Attorney General ASHCROFT. Well, you and I obviously are on the same page. We understand that these kinds of crimes can threaten the lives and well-being of multitudes of individuals, and they are far above the garden variety crime of—and I don't mean to say there's something easy about car theft or personal assault, but

when you get into threatening systems and structure and infrastructure, it's substantial.

The second—you asked something about——

Mr. COBLE. The hypothetical that applied hindsight, which is always 20/20, could it have been avoided had we had the authority that the Administration is seeking?

Attorney General ASHCROFT. It—there is absolutely no guarantee that these safeguards would have avoided the September 11 occurrence. We do know that without them, the occurrence took place, and we do know that each of them would strengthen our ability to curtail, disrupt and prevent terrorism. But we have absolutely no assurance. And I cannot say to you that had we merely enacted these in August, that we would have curtailed this activity in September. Nor can I assure this Committee that we won't have terrorist attacks in the future. The mere fact that we can't do everything should not keep us from doing what we can do, and I believe these each are constructive, valuable tools to be used in the fight against terrorism.

Mr. COBLE. And so do I. Thank you, General.

Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. Okay. The gentleman from Michigan.

Mr. CONYERS. Before I call on our colleague Mr. Berman, I'm just reminded, Mr. Attorney General, and to the distinguished Deputy Attorney General, Larry Thompson, that in our last week's meeting, it was you, Mr. Attorney General, that assured me and us on four different occasions that you would operate within the Constitution of the United States in making these laws. Is that not correct?

Attorney General ASHCROFT. I'm not prepared to say whether it was three or four times, but I assured you and I am willing to say to you that it is my conviction that these laws operate within the constitutional confines—the parameter of the Constitution.

Mr. CONYERS. Thank you.

And, Mr. Thompson, Deputy Attorney General, I counted you as assuring me three times to that same effect, that we'd work within the parameters of the United States Constitution, right?

Mr. THOMPSON. I don't remember the exact number of—Mr. Chairman—Mr. Congressman, I don't remember the exact number of times, but I did assure you that, in my judgment, none of these provisions crossed any kind of constitutional divide.

Mr. CONYERS. Thank you very much.

I'm pleased to recognize Howard Berman, the distinguished colleague of ours from California.

Chairman SENSENBRENNER. The gentleman from California is recognized for 4 minutes.

Mr. CONYERS. Well, wait a minute. We can show the times, if that's okay with you.

Chairman SENSENBRENNER. I've been keeping track, Mr. Conyers——

Mr. CONYERS. Yes, but you——

Chairman SENSENBRENNER. You've taken 11 minutes——

Mr. CONYERS. We will divide the time among ourselves.

Chairman SENSENBRENNER. You have 4 minutes left total.

Mr. CONYERS. Thank you.

Mr. BERMAN. Very quickly, a number of compelling recommendations. The notion that a grand jury investigation could produce information about a planned attack like the one that we saw on September 11 and you—and you cannot share that with——

Mr. ISSA. We cannot hear you.

Mr. BERMAN [continuing]. And you cannot share that with intelligence agencies, that law needs to be changed.

Two things stirring around of concern. One is that in your proposal, terrorist crimes are defined so broadly that any act of violence or any threatened act of violence not for financial gain is deemed a terrorist act. I'd like your reaction to that criticism. And secondly, that under this proposal, even though you never decide to prosecute, and you never decide to deport, you give—this proposal gives you or people you designate an ability to detain in perpetuity people in detention without limit, without requirement of deportation, without requirement of prosecution.

I'd just like the Justice Department reaction to those two criticisms from the public.

Attorney General ASHCROFT. First of all, I don't believe that our definition of terrorism is so broad as is represented there, and it is broad enough to include things like the assaults on computers and the assaults that are designed to change the purpose of government, the nature of government, and assaults that obviously have objectives other than financial or property objectives.

Secondly, I don't believe that the law provides for an indefinite ability to maintain people in custody without deportation. Now, in emergencies it requires—it allows for a prolonged, but that would be subject to judicial supervision and subject to the safeguards that would be provided in the judicial system.

Mr. CONYERS. Thank you very much.

Mr. Chairman—I mean, Senator Ashcroft—I mean, Attorney General Ashcroft, as you realize, can calculate, there are 11 Members on our side who haven't said a single word. Could I appeal to you and your kind consideration and your very difficult schedule to accommodate at least these Members for a couple of minutes of observation or question?

Chairman SENSENBRENNER. Had the gentleman from Michigan arrived at the beginning of the hearing and in time to make his opening statement, the Chair announced that the Attorney General has to leave at 3 o'clock, and that the time from 2:30, which is when you concluded your delayed opening statement, until 3 o'clock would be divided in half between the Republicans and the Democrats.

Chairman SENSENBRENNER. The Chair further announced that Mr. Thompson would be able to spend an extra half hour and Mr. Chertoff and Mr. Dinh an extra hour and that this part of the hearing would conclude at 4 o'clock. And nobody had any objection to that, and I do think that we are lucky to have the Attorney General here for an hour; and he's here because we agreed to accommodate his schedule, because he is in charge of conducting probably the largest law enforcement operation in the history of the world

with the horrific acts that occurred in New York and at the Pentagon. So the other——

Mr. CONYERS. Mr. Chair, I addressed my appeal to the witness, not to you, sir.

Chairman SENSENBRENNER. Well, Mr. Conyers, you knew what the Attorney General's time frame was. Nobody——

Mr. CONYERS. I still address it to the witness, sir. If you'd let him respond, please.

Chairman SENSENBRENNER. Well, Mr. Attorney General, would you like to answer Mr. Conyers?

Attorney General ASHCROFT. Thank you, Mr. Chairman. I do have a responsibility that I'm required to meet at 3 o'clock. I have asked that these three individuals accompany me. Frankly, they are individuals of great expertise in all the areas here, and they are the individuals with whom we have been working over the course of the last 10 days or so to fashion these. They are expert to the extent that I am not. They are better at the technical aspects of this than I am, and I gladly confess that because they are persons of that talent. They are all individuals appointed by the President, confirmed by the United States Senate. They have line and substantive responsibility here, and I am pleased that they are available and willing to be here. Mr. Thompson has another compelling responsibility at 3:30. The others can stay later.

Chairman SENSENBRENNER. Mr. Smith of Texas will ask the last question of you, Mr. Attorney General.

Mr. SMITH. Thank you Mr. Chairman. Mr. Attorney General, I have two questions. The first is prompted by an article in yesterday's Washington Post which described an individual with connections with radical Islamic extremists——

My mike is on, I don't know why it's not working.

Mr. Attorney General, let me repeat that. My first question is prompted by an article in yesterday's Washington Post. And let me read some of the excerpts from it. It describes an individual who had connections with radical Islamic extremists, possibly trained at terrorist camps in Afghanistan, had links to Osama bin Laden, and who enrolled in a flight school that grew suspicious when he wanted to fly a Boeing 747, having never flown even a single-engine plane and only wanted to know how to steer the plane, not to take off or land. The owner of the flight school was so concerned he called the FBI.

Unfortunately, under our current laws, they would not—the law enforcement officials were not able to obtain a search warrant. Is the Administration considering any measures that would allow for a search warrant in the future in that type of circumstance?

Attorney General ASHCROFT. We have not proposed an amendment to the standard for search warrants in this proposed legislation.

Mr. SMITH. Given the threat that an individual like that posed, that is something the Administration might want to consider.

Mr. Attorney General, my second question goes to wiretap. And that is, as you may know, as I have been told that next month is going to—disposable cellular phones are going to be widely available in the United States. What is the Administration proposing in

the changing of wiretap authority to address the kind of problem that that poses?

Attorney General ASHCROFT. Well, obviously, as individuals use cell phones and throw them away, and some of them are—it depends on how much you want to spend. You can make your phone disposable now. And some drug dealers do that. They don't use a phone very long, and they throw it away and they get another one. And we believe that that's the reason we want to have this ability for the surveillance authority not to be attached to a specific phone which ends up in a garbage can, but to be—the surveillance authority to cover the communications of a specific person. And not only should it be—follow the person, regardless of what phone the person is using, but it should be able to follow the person across jurisdictional lines.

And I think these are some of the things in the bill that have pretty broad support, because technology has simply rendered antiquated our weapons in this kind of surveillance.

Mr. SMITH. Okay. Thank you, Mr. Attorney General.

Chairman SENSENBRENNER. Thank you very much, Mr. Attorney General. Thank you for spending the hour that you have spent with us. I really appreciate your carving time out of the schedule that I know is crushing you. All of the Members of the Committee and our staffs on both sides of the aisle look forward to working with you as we try to put together legislation that will protect the American public from a future terrorist attack.

Mr. CONYERS. May I add my compliments as well, Attorney General.

Attorney General ASHCROFT. Thank you Mr. Conyers. Thank you.

Chairman SENSENBRENNER. Thank you very much. Now, Mr. Attorney General, you can go off on your way, and Messrs. Dinh, Thompson, and Chertoff will continue on. Pursuant to the announcement that the Chair made and by unanimous consent with the Committee, we will consider questions of the three remaining witnesses under the 5-minute rule, and the Chair will announce that he will not recognize those that asked questions directly of the Attorney General. Everybody was here on time today, or most everybody, so the next up will be the gentleman from New York, Mr. Nadler, who is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, the World Trade Center is in the middle of my district, and I've been rather concerned, to put it mildly. I've been going back and forth from Washington like a yo-yo for the last 2 weeks, and the devastation is incredible. I'm certainly very sympathetic and supportive of legitimate and reasoned attempts, (A) to destroy the people who did that and who may do it in the future and, (B) to improve our legislation, our law, so that we can protect ourselves. But I'm also mindful of the fact that emergencies very often, and hasty consideration during emergencies of legislation, far-reaching legislation, very often leads to unfortunate results that we regret later.

For example, many of the immigration provisions of the Anti-Terrorism Act of 1996 enacted in the aftermath of the Oklahoma City bombing—which it turned out, unknown to us at that time, had nothing to do with immigration—came from a domestic terrorist.

Let me ask you—and I want to join in urging that this legislation—that we be given a couple of weeks and not try to mark it up tomorrow, because we have to get out the language that we haven't seen yet. Our public groups outside this body ought to have a time to review, send us their comments. We ought to have time to consider it so that we act judiciously, and there's no reason we can't have legislation on the books in a few weeks. But we have to have a couple—a week or two to do it right.

But let me ask you this. The Attorney General said something I think that was incorrect a few minutes ago. I have two questions for you. One, he said that this didn't—that this bill did not authorize indefinite detention without a hearing before a judge.

I refer to section 202 of the bill: The Attorney General shall maintain custody of any such alien until such alien—the Attorney General shall take into custody any alien who is certified—this is subparagraph 3. Paragraph 3 says the Attorney General may certify an alien to be an alien, he has reason to believe, no evidence, just reason to believe, may commit further or facilitate acts described in section, et cetera, or engage in any other activity that endangers the national security of the United States.

In other words, the Attorney General decides he has reason to believe that this guy is a terrorist, or may be a terrorist. Doesn't have to show a judge any evidence of that. He has reason to believe that, and then he shall maintain custody of any such alien until such alien is removed from the United States. Such custody shall be maintained irrespective of any relief from removal the alien may be eligible for or granted until the AG deems such alien—until the Attorney General deems such alien is no longer an alien and may be certified pursuant to paragraph 3. The Attorney General under this provision has carte blanche to decide that someone, until he can be removed—even if someone says he shouldn't be removed—should stay in jail forever, with no evidence before a judge.

Now, the next paragraph says that habeas corpus may only—that judicial review may only be had by habeas corpus in the U.S. District Court for the District of Columbia. But the judicial review would seem to be only with respect to the question of whether the Attorney General has reason to believe. And there's no standards.

So that's question number one. And that would seem to indicate that the Attorney General has basically carte blanche, with only ministerial judicial review, to put someone in jail and keep them there forever with no evidence.

My second question is section 152 of the bill, according to your summary which I'm reading from, allows the issuance of a generic order to law enforcement officials so they can pursue investigations in many places, without having to return to the FISA court to get an order naming specified persons who can assist in the investigation, e.g., custodians, landlords, or telephone companies.

I'd like to know how you square that provision with language that says no warrant shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. That's the fourth amendment to the United States Constitution. Those are my two questions.

Mr. DINH. Yes, Mr. Chairman. If I may, I will take the first part of the first question of the Congressman, because I have obviously significant personal experience and some professional experience with the immigration laws of this country. And then I would defer to my colleagues, Mr. Thompson and Mr. Chertoff, with respect to their experience under the FISA statute.

Under current law, a person who is removable, deportable, or excludable for terrorist activity is subject to mandatory detention. That is current law.

Mr. NADLER. Excuse me. But who decides that he is removable for terrorist activity? According to this, it will be the Attorney General, with no evidence necessary whatsoever.

Mr. DINH. This does not, this does not affect that current law with respect to removability for terrorist activity. What this does, however, is that for the class of aliens who are removable for other purposes, for other reasons, be they out of status, have committed a crime that makes them subject to removability, for those aliens who would go be in front of an immigration law judge and be detained in the normal course, where the Attorney General has reason to believe that that alien poses a threat to national security or is likely to commit a terrorist act, he may certify so, and therefore that alien may be detained.

Mr. NADLER. But he doesn't—but the Attorney General can certify it because he doesn't—because he happens to dislike this person, because there's no requirement of any evidence given to a judge to justify the certification.

Mr. DINH. He cannot certify the grounds for removability, Congressman. He can certify the threat to national security that would——

Mr. NADLER. But that threat to national security is solely by his dictate, doesn't have to be before a judge, and enables him to hold that person indefinitely.

Chairman SENSENBRENNER. The gentleman's time has expired. The machine's not working properly.

Mr. DINH. Let me just clarify one thing. It is not indefinite. It is only pending the removal proceedings. If at the end of those removal proceedings the person is found to be not removable, then that person goes free. Pendency of that proceeding, there is still judicial review via habeas corpus, as you have mentioned, Mr. Congressman, and during that period that review would be under the normal judicial and constitutional habeas procedure.

Mr. NADLER. But there is no requirement in here of a removal proceeding.

Mr. DINH. Under current law there is. Well, if there is no removal proceeding, if the alien is not removable, the INS commissioner cannot institute removal proceedings in the first place, so it would not be——

Chairman SENSENBRENNER. Mr. Nadler, your time has expired and——

Mr. NADLER. It's important to get the question answered, Mr. Chairman.

Chairman SENSENBRENNER. I know, but it's also important that as many Members as possible be able to ask questions before 4 o'clock. The gentleman from——

Mr. NADLER. That just shows the problem with rushing this legislation so fast. Shouldn't we find out what it says and what its implications are? Is our only requirement that we meet the clock, or are we trying to do something responsible here?

Chairman SENSENBRENNER. No, we are not beating the clock. The procedure that we are following now is at the specific request of Mr. Conyers, who asked if officials from the Justice Department could testify for a period of time after the Attorney General has to leave. We have officials from the Justice Department for 2 hours. We will then have the panel which the Democrats have asked for an hour and a half, from 4:30 until six o'clock. The Chair is trying to do his best to have as many Members as possible ask questions, which means that running on after the 5 minutes takes away from one's colleagues' time. And I haven't asked any questions and don't intend to.

Mr. CONYERS. Thank you, Mr. Chairman. I want to agree with you in part, but point out that it was the witness that was speaking when the time expired. It wasn't the Member on the Committee. And he was merely concluding his response to the question that had been timely posed.

Chairman SENSENBRENNER. Well, there were a couple of follow-up questions, and that's where the problem comes.

Gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. Deputy Attorney General Thompson, gentlemen, all, we very much appreciate your taking this extra time. And I also want to say that I strongly support this legislation, with some concerns that some elements of it need some fine-tuning, and I'd like to address some of those.

As you know, under your current authority, to engage in obtaining what are called pen register information and trap and trace information. With regard to telephones, the information you get with a pen register is the telephone numbers that are dialed to from the call. With trap and trace, it is incoming information. With pen register, it's outgoing information, as I understand it.

With regard to the use of this authority, when we expand it as this legislation does to the Internet and in particular to e-mail messages, it raises some gray areas; because the information that can be obtained can have a number of different gradations.

Do you expect that the proposed expanded pen register and trap and trace authority would allow content such as header information; that is, the subject line of the e-mails, which gives you more information than just a telephone number, would be captured by these devices?

And what about URLs for Web surfing? Would you be capturing that information? You're going beyond just getting somebody's e-mail address when you obtain those pieces of information without going through all of the other procedures you have to go through to get a court order for a wiretap, which obviously entails a much greater burden on you but would allow you to get, you know, substantive information about the nature of conversations.

Mr. THOMPSON. With respect to the header information, I do not believe it would apply there to the proposal. And, Congressman, with respect to—the question was asked to us by Congressman Nadler, a very fundamental point that needs to be made with re-

spect to that. Section 152 covers FISA, FISA orders. FISA orders are subject to foreign powers or agents of foreign powers. They do not implicate U.S. citizens, Congressman, so your concerns there would not apply.

Mr. GOODLATTE. I'm not concerned about what you are gathering outside of the realm of communications by United States citizens. But I'm concerned that the terms "routing" and "addressing" need to be clarified to show that the intention of acquiring information about each message is limited to the destination or the termination of such communication, as it is with telephone communications rather than going beyond that.

Mr. THOMPSON. Mr. Chertoff will answer that direct question.

Mr. CHERTOFF. Congressman, let me see if I can answer it without getting excessively detailed. What that provision is designed to do is to really have technological neutrality to do in the area of e-mail what we do in the area of telephone with respect to trap and tracing and pen register. What we're looking for is addresses and information that tells us who sent the material and where the sender is addressing the material. We're not looking to get into content. Everybody understands that if you want to get into the area of content, you have to go and get a title III order.

So, as we understand this provision, it's not going to alter the fundamental legal distinction between getting a pen and trap for addressing information and getting a title III for content. We're not looking to get subject lines. We're not looking to get into the specifics of what somebody read when they were on the Internet, without going to get a title III.

Mr. GOODLATTE. I take it from that, that you would be willing to work with the Committee to make sure that the language in the legislation is clear in that regard.

Mr. CHERTOFF. I'm sure we would, yes.

Mr. GOODLATTE. One more question. Some have suggested that the legislation should be limited to terrorist activities and not affect crimes in general. Is there any problem with such a limitation?

Mr. CHERTOFF. Again, Congressman, I understand the impulse behind that. But let me say that often when you commence a criminal investigation, it doesn't come labeled terrorist or nonterrorist. In fact, this provision, and a number of the provisions really address inconsistencies in the law where under one type of technology we are able to do one thing, but emerging technology has created a gap in the law. There's no change in the privacy protection substantively. We're trying to just even the playing field.

As to those types of issues, there's no reason to limit it to terrorist activities. And, in fact, it will often be the case that terrorist groups engage in other kinds of criminal activities to finance or support their terrorism. So I think if we're going to be comprehensive and make sure we are not merely locking the barn door for the last horse, but we're locking the barn door for the next horse, we have to address some of these technological gaps right now.

Mr. GOODLATTE. That's a fair answer.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you Mr. Chairman. And I too want to express my frustration about the time limitations. The terrorists could not

undermine our freedoms, but as we consider this legislation that might be exactly what we're doing.

Americans have an expectation of privacy. They don't expect government officials to be listening in on their private conversations. They have a belief and a presumption of innocence. And we know that many innocent people will have their conversations listened into, and not by computers, but by people that may be their neighbors, friends, coworkers. You go to a PTA meeting and somebody may be a government official who may be—may have just listened in on private conversations. You don't know.

And that's why we want to limit the use of these investigatory powers to those where they're definitely needed. And this bill contains significant changes in wiretap law, significant changes in civil and criminal law, immigration law; they apply to everything, not just terrorism. They're not limited to terrorism. Some of these are fairly easy and straightforward. We could agree and get them passed.

But doing this on such an accelerated basis causes significant problems. For example, we're going back and forth between intelligence gathering and criminal law, and there are differences. Intelligence gathering, you don't need any predicate criminal trial. You just want to get the information, but it's limited to people that aren't citizens.

On the criminal side, you have to actually be investigating a crime. Now, when you start going back and forth, you just may be gathering information. And so we have to be very, very, very careful. Now, whatever process we use will cover guilty people as well as innocent people. And in that light, if someone—if someone has the foreign equivalent name of John Smith, and you put somebody on this list with secret evidence and it turns out it's not the same John Smith, how and when can they get their property back if you've taken their property?

Mr. Thompson.

Mr. THOMPSON. Congressman, the ability of the Intelligence Community to share information with law enforcement authorities and vice versa is critical to our fight against terrorism. The situation is the left hand has to know what the right hand is doing. This is a problem with respect to our foreign intelligence investigations. This is a problem that has really plagued some of our cases that the Department of Justice has.

Mr. SCOTT. I'm sorry, Mr. Thompson, I only have less than 5 minutes, and I just want a specific question. If someone has their property taken, they're the wrong person, how and when do they get their property back?

Mr. THOMPSON. Well, nothing in this provision forestalls the constitutional—the right of a citizen to sue the Federal Government or law enforcement officials for doing something wrong in violation of the Constitution, pursuant to *Bivens*.

Mr. SCOTT. In this case, have there been cases of mistaken identity?

Mr. THOMPSON. I'm not aware of any case of a mistaken identity in connection with the foreign surveillance. But, Congressman, these——

Mr. SCOTT. Well, I mean there's news reports that say that some people have been identified as people that were on the plane, subsequently determined to be people of the same name as others.

Mr. THOMPSON. This is not—this does not arise in the—this does not arise in the Foreign Intelligence Surveillance Act.

Mr. SCOTT. And my question is, if you have a businessman who is conducting his business, gets put on the list because he has the same name as a terrorist, and disrupts his business because you have taken his property, my question is how and when does he get his property back?

Mr. THOMPSON. You would not be taking his property. What you would be doing is sharing information with authorities so that if perhaps this person is a terrorist, you will be able to prevent or disrupt that kind of activity. Heretofore, without this kind of—without this kind of legislative change, it's going to—it has been very difficult——

Mr. SCOTT. Okay. Well I don't think you're understanding the question, because you're suggesting that you are not taking people's property if their name is on the list.

Let me ask you another question. Maybe I can get answer to that one. When you want the search wiretap warrant to go with the person and not with the particular phone, what is the protocol to make sure that someone else unrelated to the terrorism, unrelated to the drug dealer or anything else, who uses the same phone, a pay phone, for example, what is the protocol to make sure you are not listening in on those conversations?

Mr. CHERTOFF. I think, Congressman, it's the same protocol we use now. I mean when we go up on wiretap on the telephone in a house, let's say, under title III there are instructions that are given concerning making sure that if someone else uses the phone, you are not listening to that person for an extended period of time.

What I think is important about these provisions is none of them is a revolution in the law. All of these are techniques and principles that we have been applying for 20 or 30 years in some context. We are simply trying to apply them across the board so we don't have gaps in the coverage. And I think it's the gaps in the coverage that you see in the press and you see even Congress itself has noted in the past as creating problems in terms of our ability to address a potential terrorism.

I should also say that although, Congressman, you have made reference to the notion that people are going to be put on a list and have their property taken, as I understand this legislation, you—we're talking about forfeitures after conviction; we're not talking about putting people's names on a list and taking their property. So that I don't think is a dramatic change in the way the law operates. It doesn't change the balance between law enforcement and privacy. What it tries to do is make it more efficient and to make it more streamlined.

Chairman SENSENBRENNER. The gentleman's time has expired. Gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. As President Bush has said before, the vicious terrorist attacks of September 11 represented nothing less than a declaration of war against our country. To win this war, we must use every investigative law enforce-

ment and military resource at our disposal to find and punish the individuals or governments responsible for these terrible crimes.

In my hometown of Cincinnati, just as in the rest of the Nation, there's shock, there's outrage that anyone could have perpetrated such unspeakably evil acts. People want the full power of the United States to be used against the cowards who carry out these attacks against innocent men, women, and children; and people want a reasoned examination of what additional steps can be taken to combat terrorism and enhance public safety.

As we move forward with efforts to combat future terrorist attacks, we must remember that freedom is the foundation of our Nation. The terrorists want to change our way of life. They want to put fear in our minds and they want to suspend our liberties. We must not cave in to their demands by suspending or weakening our constitutional rights. Our goal must be to eliminate terrorism and make sure that all nations and the supporters of terrorism understand that an attack on the United States brings grave consequences. At the same time, we must protect the freedoms that we as representatives of the people have been entrusted to defend, the freedoms that thousands of American men and women have sacrificed their lives to defend those freedoms—we should always keep that in mind—the freedoms that make the United States of America the greatest country on the earth.

I do support many of the proposals that the Attorney General has put forward. However, I also have concerns over some of the provisions, as many of my other colleagues, both on the Democrats and Republicans have, which could have a real impact on our citizens' individual liberties. The freedoms that we enjoy as Americans and the limitations on the government that our system provides were won at a real cost.

With that in mind I just have a couple of questions. Section 107 of the proposed bill would expand the range of records that law enforcement officials may compel communications companies to make available without a court order, such as credit card information. The example used in the consultation draft pertains to credit card records as a means to determine the user's true identity.

What types of transactions or purchases would the Department of Justice deem to necessitate such an order? Specifically, what products or services would subject a consumer to the scrutiny of the Federal Government? And secondly, how would the DOJ insure that the financial privacy of innocent law-abiding citizens is protected, especially given the potentially wide array of purchases which may be subject to such an order?

Mr. CHERTOFF. Let me see if I can answer both of those briefly. The reason we're interested in credit card information is because often people who are engaged in criminal activity are not using their real name, or they may be moving from place to place. And we want the credit card information to determine who is paying for the service. In other words, who's paying Yahoo or AOL or whomever it is. This is not a provision that would get into the substantive purchasing that people engage in over the Internet.

Secondly, I should say with respect to the subpoenas, this is all confidential information that's held by law enforcement. It's not

material which would be made public and therefore it would safeguard people's financial privacy.

Mr. THOMPSON. Congressman, may I just add that—and I understand your concerns. And as we have tried to fashion this—this legislation, what we have considered is really how the terrorist acts in today's world. The terrorist acts globally. The terrorist acts across the country. The terrorist acts smartly and quickly. And what this legislation is designed to do is to give the Department of Justice and law enforcement officials tools to react to that kind of way of doing business that the terrorist has engaged in; to not only allow us to catch them and bring them to justice, but to disrupt and prevent their activity. And if we're going to do that, if we're going to be engaged in disruption and prevention, we're going to need to have all the information we possibly and reasonably can and we are going to need to be able to react quickly. And that's what this proposed legislation is designed to do.

Mr. CHABOT. Thank you. Yield back the balance of my time, Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. Yesterday I, along with several other Members of the House, went to New York City. And I must say that to be there at the site of the former World Trade Center and to look at the damage done and the pictures of thousands of people who are lost, and probably forever, is an overwhelming experience. And I found myself today attempting to temper the anger that I feel, and I think all Americans feel, at this assault on our country. Because if we damage the Bill of Rights in the process of pursuing the wrongdoers, the terrorists will have won. And so we need to make sure that we preserve and defend the Constitution of the United States and the Bill of Rights that gives us our freedom.

Now, frankly, looking at this draft, I think there are some things here that all of us agree about and that we could do very quickly. I think there are some areas that with some further working we might quickly come to an agreement. And I think there are some areas that have serious flaws.

And without getting into a debate, I do have a very strong concern, Mr. Dinh—and I didn't have a chance to talk about this over the weekend—but the—that the indefinite detention is a real issue, because there is no time line during which the deportation proceedings must be undertaken. And so the effect really, I mean, and the Court's been very clear, and even recently in terms of those who cannot be deported because of persecution or failure of the origin country to accept the deportee, that you can't keep someone in indefinite detention and be constitutional. So we are going to need to work through those issues.

Chairman SENSENBRENNER. If the gentlewoman will yield at this point, Mr. Thompson's time has expired, but yours has not. So you are excused, and Messrs. Chertoff and Dinh will stay.

Ms. LOFGREN. All right. The question I had next was for Mr. Thompson, but perhaps we'll have another opportunity to visit that.

A lot of concern has been expressed in some circles about the search warrant and wiretap provisions that will become nationwide in scope. On the other hand, we also know with the mobility that exists in this society and the disposable phones, that there's a technology issue that also needs to be dealt with.

I'm wondering if in your judgment, section 152, the FISA Court roving wiretaps, section 108, the nationwide search warrant section, and section 351 might achieve your goals and yet be markedly assisted in terms of civil liberties by requiring that the court with jurisdiction actually would have original jurisdiction in that the offense or the person was present, number one; and number two, that the Court might be asked to produce a finding and additional order that the scope be nationwide; that that wouldn't just be an assumption that there would be some representation and judicial finding as to the nationwide scope of the order.

Would that—wouldn't that solve some of the concerns and also achieve your goals?

Mr. CHERTOFF. Congresswoman, I think, you know, we were very sensitive to that when we put together the legislation. As I understand the proposal, it would require that we go to a court which does have jurisdiction over the offense.

Ms. LOFGREN. It does, but it doesn't appear to be in each one of those sections.

Mr. CHERTOFF. Well, I think if that were to be an issue, I think we could probably address that. And the point is we're not looking to shop to find a court somewhere that's unrelated. We want to pick a court that is in fact connected with the offense. I think, though, that once we have done that, there is no element of civil liberties that is sacrificed by allowing that court to exert nationwide process. We already do that in other areas and I think this would just be consistent.

Ms. LOFGREN. The concern that has been raised by some in the civil liberties community has been the particularity requirement that might be dealt with by the court order. But without going further, I wanted—and maybe you can answer that, perhaps only Mr. Thompson could. It seems to me, I mean there are serious flaws in some of the immigration-related provisions. But I want to ask about what we could do now in the administration of the laws that really don't require a change in the law.

For example, and I—you know, just in what's in the paper, it appears that the individuals who are the subject of concern entered in most cases, upon inspection they were on watch lists. They got visas, and apparently there has been a failure of communication and computer communication. And I'm wondering what we might do to upgrade the biometrics, the computer sharing of information relative to inspected entry.

Mr. DINH. Congresswoman, thank you very much and rest assured that our colleague, Jim Ziegler, is working hard as is everybody at the INS in order to meet the enhanced threat. Whatever we can do administratively, we are already doing or exploring ways of doing.

That said, there are things that we need your help on legislatively. For example, in two of the provisions with respect to—specifically to the watch list, we proposed that that watch list be—to

have the ability to share with our partners, our multilateral partners, in the ability for them to help us in looking out for these individuals; likewise, with respect to the sharing of some of our criminal record information, so the INS can enhance ability to——

Ms. LOFGREN. And you notice I've not asked about those provisions.

Chairman SENSENBRENNER. The gentlewoman's time has expired. The gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman. The question I have is a very fundamental one and we've touched on it a number of times today, and I still don't have a satisfactory answer to it. The essence of the question is if we are interested in proposing here changes to criminal law and criminal procedure to attack international terrorism, why is it necessary to propose a laundry list of changes to criminal law generally and criminal procedure generally to cast such a wide net, and why is it necessary to rush this through?

Does it have anything to do with the fact that the Department has sought many of these authorities on numerous other occasions, has been unsuccessful in obtaining them, and now seeks to take advantage of what is obviously an emergency situation to obtain authorities that it has been unable to obtain previously, even though the government cannot tell us in the Congress, with any degree of certainty or with any specific examples, that had these authorities been available to the government prior to September 11, they have some confidence that these events could have been prevented.

If you look, for example, as examples of my concern and I think the concern of another—a number of other Members on both sides of the aisle, we see many, many provisions in the Administration's proposal that have nothing specifically to do with fighting terrorism, but yet apply generally to all criminal offenses or all criminal procedures.

This proposal would seek to institutionalize and justify the government's use of Project Carnivore, for example, not limited to fighting terrorists. Expanded dissemination of wiretap information to any government employee is not limited to terrorist information. Use of wiretap information from foreign governments is not limited to antiterrorist or terrorist information or activity, but would provide, I think, a gaping loophole through which our government could use information which, if gathered directly by our government, would be unconstitutional and therefore inadmissible if a foreign government collects it.

Multipoint roving wiretap authority is not limited to incidents of or investigations involving terrorist activity, but applies generally. The lower standard—lowered standard for foreign intelligence surveillance would not apply simply to terrorist or antiterrorist information. Broad access by administrative subpoenas, which for the public means subpoenas issued not by a judicial officer, but simply by an administrator in the Department of Justice and therefore, with no judicial oversight, would apply across the board, not just to terrorists or antiterrorist activities.

The authority to conduct secret searches, so-called black bag operations, where contemporaneous notice is not given, which is the

norm currently, would be authorized; not limited to terrorist or antiterrorist cases.

I really would appreciate something more than just generalities, if you all could. Why it is necessary, without proper hearings, without due deliberation and input, to dramatically change provisions of U.S. criminal law and criminal procedure across the board simply to attack the problem of terrorism; and why would the Department not agree to simply address those provisions that do relate to terrorism, which we can all agree on—there are some gaps in the government's current arsenal to fight terrorism—but allow us somewhat more deliberative process to address these other fundamental concerns and across-the-board changes.

Mr. CHERTOFF. I'm—I don't think I'm going to have the time to address each one of those items. But I do want to try to address some of them and talk generally. I think the Department was very careful when we put this together not to engage in the temptation to treat it as a laundry list of all the things we wished we could have. At the same time, I'm confident in saying that every one of the provisions we have put in here is extremely important in fighting terrorism.

That's not to say that they don't have relevance in some instances to other kinds of crime. But they're, all of them, related quite specifically to what we need to do to be more effective in fighting terrorism.

And let me address some of the issues that you've raised, Congressman. You've talked about the need to share FISA information, foreign intelligence surveillance information. Well, by definition, that involves national security information, either terrorism or espionage, and I think we can all agree that those are critical threats to the United States. What we're trying to do is, as Mr. Thompson said, is make sure one hand knows what the other——

Mr. BARR. But foreign intelligence is much broader than terrorism.

Mr. CHERTOFF. It includes espionage, for example, as well.

Mr. BARR. Which is already against the law and for which the government already has plenary authority to investigate and prosecute.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. It is obvious by the extended questioning of the Members that this is not enough time, though I do want to thank the gentlemen, thank General Ashcroft, who I wish could have stayed, and thank the deputy Attorney General, Mr. Thompson, as well.

My opening remarks will simply be I ask that you take a message back. I believe some 4 or 5 years ago, when we entered into this process, in 1996 I believe, we had 4 days of markup. I would ask that the message be taken back that there are many of us who want to do the right thing. We want to do it collaboratively. We want to do it in a bipartisan way that respects the rule of law.

Let me briefly say that I'm probably going to give you a number of issues that I hope are instructive, and then probably will have to receive some of these answers by way of independent communication. Yesterday in an open ceremony that was held in New

York, one of the religious leaders indicated that we should not consider that 6,000-plus people died as much as we should consider 6,000 times one. One person died, 6,000 times. The reason is the impact on the loved ones of that one person should be something that we never, never forget. And I agree with that.

And I hope this process in this hearing room does not suggest to you that we diminish what you have to do. But at the same time, this room should represent what it is, the Judiciary Committee, with oversight on the rule of law, the Constitution and the Bill of Rights that all of us cherish and want to protect.

My first question is, I understand that the Attorney General has said you have detained 352 individuals. Can I quickly get an answer as to whether they're still detained and whether they were detained under current law?

Mr. CHERTOFF. I think the answer is that everybody who has been detained has, of course, been, as far as I understand it, detained under current law. And they're all working their way through the process under the existing law and regulations.

Ms. JACKSON LEE. And are they presently still detained?

Mr. CHERTOFF. I can't tell you as we speak here, because I have often found that between 1 hour and the next the situation changes.

Ms. JACKSON LEE. Thank you very much. I would want to pursue that in terms of the current law that you use to detain these individuals. I think that is key.

Let me also say that I understand through the spring of 2001, that there were several indicators that the FBI had that something was awry. The question that I'm going to want to hear, whether I have time to hear it from you now, is when the FBI gathers such material, where do they translate that material and what kind of actions are then translated?

Let me thank the FBI and the Department of Justice for what you have thwarted. But I do think there is something wrong with the system in communicating information. Particularly, my interest, serving on the Immigration Subcommittee, is where that information gets translated into the INS and how it does.

Let me give my list of questions, and I might have to subject myself to not getting your answers right now, particularly on the question of visas. Visas are handled by the State Department. INS has the authority of oversight once they're here. Have you presented anything in collaboration with the State Department that we might change that process, whether we put it all under one operation, whether there is more dialogue? That's where the question came. Some of these people, the 19 that are on the original list, were here legally. I want to raise that question. The Mexican border, I understand, from where I come from, has stringent enhanced security. My question is, what's happening at the Canadian border? And I understand there is some. But we have looked at what we might have to change with respect to the Canadian border and as well the Canadian immigration procedures that are of concern to all of us.

What my points are in making—raising these issues, and I'm going to quickly finish so I can get to the immigration, so you can answer those questions, is we need time to deliberate. You have a

situation where you're holding someone responsible for contributing to a group that may have been legal 5 years ago. Suppose it's the Christians for Democracy in Ireland? What do you do? Hold that person as a terrorist?

My last question would be, do you see the viability of an expedited court review system throughout all of these changes? Because I agree with Mr. Barr as to whether or not we're just trying to change the criminal code or we're trying to ferret out terrorists, we need to do this in a deliberative manner.

I would appreciate greatly if you would answer the immigration questions and the cross-pollination of sharing information, because I feel that is where we had more than a lot of trouble, as I acknowledge the work you've done. I yield to the gentleman.

Mr. CHERTOFF. I appreciate that, Congresswoman. I'm going to let Mr. Dinh speak to the immigration issue, but I'd like to speak to the cross-pollination issue, because I think you've put your finger on exactly one of the problems we're trying to address here, which is making sure one hand knows what the other one is doing.

It is wonderful to collect information. But if we can't make use of it, it is a colossal waste of time. One of the critical cornerstones of this legislation is designed to make an amendment in the language of the Foreign Intelligence Surveillance Act that we believe restores the original intent, that allows us to use court-ordered electronic surveillance to get information on potential terrorists, people who are agents of a foreign power, and make sure it gets communicated in a timely fashion to those criminal justice authorities who can arrest people and incapacitate them so that they are no longer out on the street, available to plant a bomb or hijack a plane.

Unfortunately, the way the courts have interpreted the law up to now, they have made it very difficult to bridge that gap. And we've been in the unenviable position of sometimes having intelligence information in the possession of the FBI that the law appears to prohibit them from sharing with the people who would go out and make the case and make the arrest and incapacitate these people.

That is why section 153 of this legislation is critically important. It restores what I think is the original intent of the law, to make sure that there is adequate protection, court protection against surveillance, but a reasonable sharing of information.

With that, I'll let Mr. Dinh address the immigration matters.

Mr. DINH. If you will notice, of the list that we have proposed for the information sharing in sections 103, 154 and 354, that list is limited to specified individuals. The individuals listed include national security, national defense, law enforcement, intelligence and, importantly for your question, immigration individuals, precisely for the reason that you have highlighted. When we have information that is critical in wiretap situations, in FISA situations, or in grand jury situations, we do not have the capacity in order to share that information with key individuals, especially in the immigration or consular activities, so as to prevent this type of—exactly the type of situation you have highlighted, Congresswoman.

Ms. JACKSON LEE. I thank you. I know I have additional questions, but I thank you, Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman's time has expired. Gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman. I first want to express first my frustration with the terrorists and their lack of concern over our deliberative process here. Secondly, I'd like to point out this is a complex measure, with many issues, and I appreciate you and your staff for having been willing to work with me and my staff to improve this bill. And thirdly, I'd like to encourage our colleagues to engage with you, Mr. Chairman, and your staff, so that we can improve this bill in a timely fashion. And I hope that we can produce a bill that I and others can vote for.

I would like to just make one comment that is, frustratingly, not dealt with here very well. That is, we are talking about technology neutral as we approach the law. And in fact, that doesn't make sense unless you're dealing in the context of DOJ not being limited by technological transformation. There are differences between e-mail and telephones and between e-mail and written letters. And if I might just bore everyone by pointing out this, so that we have it in front us, a telephone conversation is evanescent in that they may be able to capture a conversation if it has certain words in it. Someone who's wiretapping may listen for an appropriate period of time to determine if it's a relevant phone conversation, and if it's not, under the current guidelines we don't pursue that. But an e-mail stays there forever. And that means that it can be—once you have the content without reading it, without searching the way you would search a telephone conversation, you can identify information in that e-mail as long as it's available. As between e-mail and their headers and the pen register kind or trap and trace kinds of things we're talking about doing, technology changes the nature of communication. They were not staying technologically neutral.

You have people—when you have a conversation on the telephone, you may place multiple calls and have a conference call, but that's actually fairly rare in our society. Whereas, with e-mails you may have networks of people. And finally, as we move into the next phase of technology, where pier-to-pier, and broadband-to-broadband enables pier to pier, the nature of who the targets of these subpoenas would be are much greater and different.

Therefore, I think that we need to have a real and serious sunsetting provision so we can reevaluate what we do here in context, after we've a little bit of experience with it.

That said, I do have some questions, recognizing that any question is very narrow compared to the complexity of this issue. Under section 103 of the proposed legislation, as written, the sharing of informing produced by law enforcement investigation with others in the executive branch appears to be unlimited. Now, we've talked a little bit about that. But in particular, how do you propose to limit that sharing to only relevant persons in the intelligence community?

Mr. CHERTOFF. I think in the period of time since the draft was prepared, I think we have agreed that we would somewhat more narrowly frame the people who could receive——

Mr. CANNON. Let me just—I have a couple of questions, so what we'll do is we'll look at the draft as to that particular point, if you have addressed it. That may be sufficient. Do any current laws gov-

erning the sharing of information in the executive branch apply here?

Mr. CHERTOFF. They would, to the extent information would be shared in the executive branch. I don't think this would change it except to the extent that the legislation specifically indicates.

Mr. CANNON. Okay. Would you support some sort of independent review to insure that such information sharing is appropriately limited?

Mr. CHERTOFF. Well, I think we have existing standards. I mean there are restrictions on the dissemination of classified information, confidential law enforcement information, things of that sort, which would apply here as well.

Mr. CANNON. But I don't think that addressed the issue of some kind of independent review to see whether that inappropriate things happen.

Mr. CHERTOFF. Well, I mean, I'm not quite sure, Congressman, what you mean by independent review. I know for example under title III for wiretap information, unauthorized disclosure of that information is not only a criminal offense, but it can give rise to civil liability, and there have been cases in fact where people have been prosecuted or sued for that, as I understand it. So I don't know that there's any—I mean that is an independent check. I don't know that we would want to engraft some independent actor here.

Mr. CANNON. Thank you. Just one final question. Under sections 108 and 351 of the Anti-Terrorism Act, you have a nationwide warrants proposal. What existing mechanisms, or ones that you would propose, could prevent forum shopping by prosecutors for warrant-friendly judges?

Mr. CHERTOFF. Well, it has to be the case, first of all, that the issuing court would be one which is—one in which the crime occurred. So that obviously limits you to one of a comparatively small number of jurisdictions. Secondly, of course, you go to whatever judge the particular district has as the duty judge during that period of time. We don't have the ability to control the judges. There's usually, in my experience, some kind of rotation that the court itself sets up. So I don't think as a practical matter, there's any possibility of shopping for a particular friendly judge.

Mr. CANNON. Let me just follow up and ask, when you're talking about where the crime is committed, what if you have a wiretap in northern Virginia, not a wiretap, but you have—you have got a trap and trace in northern Virginia on an e-mail which may have been sent from southern California to Wisconsin? Do you have—where is the crime when you do that?

Mr. CHERTOFF. Well, for example, in this case, northern Virginia where we had an explosion at the Pentagon, or New York, the southern District of New York where there was a crash in the World Trade towers, those would be two places that would be permitted under law. We wouldn't simply go to, let's say, to Montana or to Utah and pick those arbitrarily simply because some portion of the electronic communication may have originated there or ended up there.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much. Mr. Chairman and Members, many of us have bent over backwards to show unity and to give support to this President. We all recognize that this is a very difficult time, that something very terrible has happened, and we voted for $40 billion to deal with this. We have voted to give the President the authority to do what he needs to do to apprehend those responsible. We've supported an extraordinary amount of money to the airlines to make sure that they are operating, and on and on and on.

And I'm hopeful that because of this mood that we're in, and we have to be in, that we are not placed in the situation where we are being asked to do things that normally we would have a long debate on and a tremendous fight, just based on where we're coming from philosophically.

Civil libertarians are afraid of being rushed on this kind of legislation. And many of us feel very strongly about the Constitution. And while we have been very cooperative and we have bent over backwards, we're going to draw the line. We have to draw the line. And we cannot be rushed into allowing this tragic moment that we're in at this time to cause us to support violation of privacy and the Constitution.

I'm not going to ask you any particular questions because I don't think you can answer them at this point. It's just too much. And the way we've been doing this today does not lend itself to the kind of work that could get us serious results. I don't really know what your definition is of the intelligence community. Does that include the CIA, the FBI and the DEA? And who's in charge even of this investigation?

We know that the CIA gave to the FBI specific information about individuals who had been identified as associated with terrorist activities, and the FBI dropped the ball. Who calls the shots and who's calling the shots now? We don't know how it all works, and I certainly would like to know more about that. How is terrorism defined? I'm really worried. You know, we've got some young people who feel very strongly about globalization, and many of them protest. They wanted to be here in Washington protesting. They're not terrorists, they're young people from all over the world who believe that globalization and the WTO is creating serious problems for little people and working people. Are they going to get caught up in this web and be identified as terrorists and all that goes along with that?

The other thing with this roving surveillance, we know that in this new technology we have, maybe we will have more disposable telephones, et cetera, et cetera. But when you attach the surveillance to an individual, and this individual now is living with—in their mama's house for 6 months or a year, now the mama's telephone becomes the object of the surveillance, and the friends and the workplace, and it never stops. It just goes on and on and on. You don't have to go back and get an order. You don't have to tell anybody anything.

Do you have a time certain? Do you want to do this for 6 months, 12 months, 10 years? I mean, in perpetuity? How does this all work? This is dangerous.

Also, let me just say, the Attorney General referred to how well the conspiracy laws are working as it relates to drugs. Those laws are not working well. We have innocent people that are caught up in these conspiracy laws, and a lot of women who happen to be the mates sometimes of individuals that are involved with drugs, and because they're in the telephone call, that somebody determines wording was used where the woman should have known what the man was talking about, or she happened to be in the car when a drug stop is made, didn't know—and she's ending up in prison, with long prison terms.

And now you want to change the law where you have specific prison terms for conspiracy in this area to what you call the same as what the eventual law that you would consider broken would dictate. So that, you know, you're moving from, you know, 10 years to 20 years or 30 years or life, et cetera, et cetera.

Also, you know one thing about the intelligence community that I've determined, we've had some laws on the books as it related to drugs. One—and when I took a very close look at what was done, when the United States was involved in the conflict with Nicaragua and trying to support the contras, the intelligence community had a memorandum of understanding where it waived its own laws. A memorandum of understanding between——

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. WATERS. Well, I find myself agreeing with Mr. Barr, and that's unusual, ordinarily, and certainly not expected from me. You are much too into violation of the Constitution.

Chairman SENSENBRENNER. The Chair will stipulate to a conspiracy between the two Members. The gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. Thank you, Mr. Chairman. First of all, the Attorney General said that really the purpose of this legislation is to, number one, take care of new technology; in other words, update our statutes because of modern technology. And we all understand where you have mobile phones, e-mails, computer activities, you need to be able to track those people and their activities. And I think we all agree that we need to update antiquated statutes.

He also said that this is to confront the uniqueness of the terrorist threats that we have today. Well, I mean I'm going to accept that, having accepted those things, we all understand that and I think support it. I want to direct your attention to two specific proposals.

Mr. BACHUS. One is section 352. Now, what section 352 deals with is simply the circumstances in which the government can search someone's home without a search warrant; is that right?

Mr. CHERTOFF. No, it's not actually. What section 352 does is it says when you get a search warrant, the judge can allow you to delay giving notice to the people who have been searched. So, for example——

Mr. BACHUS. Right. Well, isn't that—and I'm looking at your Justice Department draft on notice, and what it says here is you're going to establish a uniform standard for all searches without notice. Well, I think what the statute says is this, and, frankly, there are courts already that have ratified this. What you say right now

is that there's presently a mix of inconsistent rules and practices varying from jurisdiction to jurisdiction, but that what you want to do is establish a statutory uniform standard for all notice.

Mr. CHERTOFF. That's correct. We want the rule to be clear that——

Mr. BACHUS. Now, this doesn't just involve terrorist activities. This involves all Americans. In other words, before you issue a notice that you're going to search their home, you have to comply with the standard, and that that—you're going to adopt the present standard applicable to stored communications to all cases.

Mr. CHERTOFF. Let me see if I can make this clear. This doesn't mean that in every case notice will be delayed. It means that when a judge makes a finding——

Mr. BACHUS. Right. Let me tell you what that finding is. It says that you can notify—you don't have to notify in the case where an immediate notice of execution of a search warrant would either, number one—and this is you all's wording, not mine—would jeopardize an ongoing investigation, and I would say notice would always probably jeopardize—I mean, it would probably have a tendency always to jeopardize an ongoing investigation—or, two, might otherwise interfere with law enforcement activities. I would think anything—any time—I would think any time you give a notice, you're interfering with law enforcement activities. In fact, that's why you go to court and get a notice.

Mr. CHERTOFF. Let me try to shed light on this by giving you a real——

Mr. BACHUS. We need to see why those are good law enforcement activities.

Mr. CHERTOFF. Well, let me give you a real practical example of something that happened. There was an investigation involving——

Mr. BACHUS. No. And let me say this. I know you can always take an example where this is called for, but, you know, the fourth amendment says we don't search someone's house until they're given notice. Otherwise——

Mr. CHERTOFF. Actually, I have to——

Mr. BACHUS. Well, and there are exceptions to that.

Mr. CHERTOFF. I have to——

Mr. BACHUS. But you're going to give—there are going to basically be two exceptions under this new proposal.

Mr. CHERTOFF. Well, let me see if I can try and address this for a couple moments. First, in title III, which is, of course, something that has to comply with the fourth amendment as it relates to electronic surveillance, Congress has already enacted a provision that allows delayed notice. I can tell you from my own personal experience that there are circumstances in which you need to be able to go into a location and search——

Mr. BACHUS. Absolutely.

Mr. CHERTOFF [continuing]. But you cannot give notice or wind up alerting people who may be very dangerous, and that has arisen in terrorist cases. All we're asking to do is to give the judge the ability to delay notice; not eliminate notice, but delay notice.

Mr. BACHUS. Well, okay, and if that's what you're doing, but you're applying this to all cases where you want to search someone's home.

Mr. CHERTOFF. Well——

Mr. BACHUS. And you're asking for uniform standard, and that standard is that you don't have to give notice, which the Constitution normally says you have to give, if it would jeopardize an investigation, or if it would interfere with the law enforcement activity. That's pretty broad.

Now, let me go on to the other one, and I'm going to just submit this for the—this is from page 14 of what you all have given me. The other one is section 406, which deals with seizing people's property, seizing a citizen's property without a hearing. That's pretty fundamental, and presently there are different standards. And what you say in this draft you've given me is that you want to amend the Controlled Substance Act, because all other provisions governing criminal forfeiture are incorporated by statute—I mean, that the Controlled Substance Act is basically the statute that all other criminal forfeiture acts draw from. But you're changing it in all cases. You're not limiting it to terrorism.

So my question there, you've got the seizure of a citizen's property without—you know, before a trial, without a hearing, and you're not limiting it to terrorist activities. I just think these two—and I'm going by what you're saying. Your reason why you're saying you amended the Controlled Substance Act was because the provisions governing criminal forfeitures in drug cases are incorporated by statute into all other criminal forfeiture statutes. And my question is, you're changing all pretrial seizure of property.

Mr. CHERTOFF. Well, actually I think, Congressman, what we're doing is, again, we're trying to eliminate inconsistencies and gaps in the law where due to unanticipated—either changes in technology or other changes or unanticipated developments, there now appear to be inconsistencies in the law. All of these things——

Mr. BACHUS. I'm not sure the mobile phones——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. BACHUS. Let me just close, if I can have 10 seconds. I'm just saying that these new changes in technologies I don't think should cause us to totally change our laws to notice of searching someone's house or seizing their property. And yet you're going—you know, it appears with these two—and I support 90 percent of what you're doing, but I'd just say take a look at section 352 and 406. I mean, I think they—you're changing our fundamental laws as opposed to seizing someone's property pretrial without a hearing, searching their home without a notice, which are important fourth amendment guarantees against unreasonable search and seizures.

Chairman SENSENBRENNER. And the gentleman's time is expired.

Mr. Chertoff and Mr. Dinh, let me thank you very much for spending this extra time with us. I think that you've been most helpful in clarifying many of the issues.

Before adjourning this hearing, let me make an announcement. A week ago Sunday, the Attorney General on one of the Sunday morning talk shows announced that he was going to be submitting an anti-terrorist package to Congress. We received a consultation draft on Wednesday, which is the material that has been included

in the Members' packets for this hearing. Since that time, the Majority and Minority staff have been negotiating nonstop. I cancelled my trip back to Wisconsin this weekend to drop by those negotiations and to make sure that the negotiations were continuing on track.

The Justice Department was consulted at every stage of the negotiation, and I can say that many, but not all, of the concerns that were addressed by Members on both sides of the aisle today have been addressed, and there has been language that has been proposed that is at the present time being vetted. And I think I can say that we are close to reaching an agreement on a bill that can be bipartisan sponsorship, pass the House of Representatives by a huge bipartisan majority, and I want to continue that process.

Mr. CONYERS. Would the Chairman yield?

Chairman SENSENBRENNER. Let me finish my statement first.

I want to continue that process. For that reason, you know, let me say that because we are so close, it is my intention not to have a markup tomorrow on this legislation, but I would like to have a markup on this legislation and hopefully an agreed-upon bill sometime next week. So that will give us an additional week to attempt to bridge the gap and to reach an agreement so that we can present a bill by the Judiciary Committee which will have overwhelming support on both sides of the aisle.

Having said that, let me say that throughout this process, since the Attorney General's first statements on television 8 days ago, I have been insistent upon following the regular legislative order and having a hearing and the markup, for which I have been criticized as attempting to slow down the process. I would point out that neither the $40 billion emergency supplemental appropriation, the war powers resolution and the airline bailout bill, which have been previously passed, went through the regular Committee process. And I think we will find out that because of that failure, the Congress is going to have to fix up at least two of the three items that have previously been considered by the Congress. I am very fearful that if this bill is put on a slow roll, all of a sudden we will lose as a Committee our right to make improvements and to attempt to reach a bipartisan process to present to the House of Representatives, and we will have another bill that is written by the bipartisan and bicameral leadership which will be presented to the House of Representatives for an up-or-down vote.

That means that everybody who is a participant in this process, whether it's the Justice Department, the Majority Party, the Minority Party and the bipartisan leadership, is going to have to bend a bit, because a compromise by definition is something that gets the job done, but doesn't make everybody completely happy. So I think that we've got to work on a goal of dealing with a markup next week on this bill to reach a conclusion of a markup on this bill, and that means that in the week between now and the time that the markup will take place, these negotiations have to go on and, in my opinion, have to reach an amicable and successful conclusion. Otherwise all of the efforts that all of us have put into this legislation may go for naught.

The gentleman from Michigan.

Mr. CONYERS. Well, Mr. Chairman, the length and accuracy and sincerity of your comments make mine very brief indeed. First of all, I want to thank you on behalf of nearly half the colleagues here. I think you're right. I think that no one in this body can accuse you of trying to slow down the process, and you've pointed out correctly that our jurisdiction differs from the two other Committees that have acted previously. Why? Because we have jurisdiction over the Constitution. The Constitution cannot be rushed, and there's no one on this Committee trying to slow this down. But I think because Yom Kippur is coming very shortly, and if you chose to take the—tomorrow's schedule and make it a conference in which we could talk over the 16 points taken out of the Ashcroft proposal that is now being reduced to legislative language, I think we'd be able to move this thing along remarkably well and meet the accommodations of our leadership on both sides.

I would also ask unanimous consent to include the clarification of the 16 provisions taken out of Ash—the Ashcroft plan.

[The information referred to follows:]

There are a number of provisions which we can agree to today:

109 CLARIFICATION OF SCOPE

Law enforcement must have the capability to trace, intercept, and obtain records of the communications of terrorists and other criminals with great speed, even if they choose to use a cable provider for their telephone and Internet service. This section amends the Cable Communications Policy Act ("Cable Act") to clarify that when a cable company acts as a telephone company or an Internet service provider, it must comply with the same laws governing the interception and disclosure of wire and electronic communications that apply to any other telephone company or Internet service provider. The Cable Act, passed in 1984 to regulate various aspects of the cable television industry, could not take into account the changes in technology that have occurred over the last seventeen years. Cable television companies now often provide Internet access and telephone service in addition to television programming. Because of perceived conflicts between the Cable Act and the laws that govern law enforcement's access to communications and records of communications carried by cable companies, cable providers have refused to comply with lawful court orders, thereby slowing or ending critical investigations.

110 EMERGENCY DISCLOSURE OF ELECTRONIC COMMUNICATIONS

Existing law contains no provision that allows providers of electronic communications service to disclose the communications (or records relating to such communications) of their customers or subscribers in emergencies that threaten death or serious bodily injury. This section amends 18 U.S.C. § 2702 to authorize such disclosures if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.

Current law also contains an odd disconnect: a provider may disclose the contents of the customer's communications in order to protect its rights or property but the current statute does not expressly permit a provider to voluntarily disclose non-content records (such as a subscriber's login records). 18 U.S.C. § 2702(b)(5). This problem substantially hinders the ability of providers to protect themselves from cyberterrorists and criminals. Yet the right to disclose the contents of communications necessarily implies the less intrusive ability to disclose non-content records. In order to promote the protection of our nation's critical infrastructures, this section's amendments allow communications providers to voluntarily disclose both content and non-content records to protect their computer systems.

151 PERIOD OF ORDERS OF ELECTRONIC SURVEILLANCE

This section reforms a critical aspect of the Foreign Intelligence Surveillance Act (FISA). It will enable the Foreign Intelligence Surveillance Court (FISC), which presides over applications made by the U.S. government under FISA, to authorize the search and surveillance in the U.S. of officers and employees of foreign powers and

foreign members of international terrorist groups for up to a year. Currently, the FISC may only authorize such searches and surveillance for up to 45 days and 90 days, respectively. The proposed change would bring the authorization period in line with that allowed for search and surveillance of the foreign establishments for which the foreign officers and employees work. The proposed change would have no effect on electronic surveillance or physical searches of U.S. citizens or permanent resident aliens.

206 INTERAGENCY DATA SHARING

This amendment to the Immigration and Nationality Act (INA) would recognize that the interagency cooperation provided for in INA Section 105 now serves a broader border security function, and would enhance that function by improving consular officers' access to crime information. This is consistent with the fact that securing the borders of the U.S. against the entry of international terrorists, traffickers in narcotics, weapons or persons, international organized crime members, and illegal entrants is not the responsibility of any single federal agency. Consular officers abroad must facilitate legitimate travel while preventing the travel of individuals who present security or other threats to U.S. government interests. These officers need electronic access to information from border security and law enforcement agencies that will assist in identifying high-risk travelers, including information maintained by the FBI on aliens suspected of committing crimes in the U.S. (e.g., information contained in the NCIC-III and Wanted Persons File databases). Without this information, a consular officer could unknowingly grant a visa to a known or suspected criminal.

353 DNA IDENTIFICATION OF TERRORISTS

The statutory provisions governing the collection of DNA samples from convicted federal offenders (42 U.S.C. § 14135a(d)) are restrictive, and do not include persons convicted for the crimes that are most likely to be committed by terrorists. DNA samples cannot now be collected even from persons federally convicted of terrorist murders in most circumstances. For example, 49 U.S.C. § 46502, which applies to terrorists who murder people by hijacking aircraft, 18 U.S.C. § 844(i), which applies to terrorists who murder people by blowing up buildings, and 18 U.S.C. § 2332, which applies to terrorists who murder U.S. nationals abroad, are not included in the qualifying federal offenses for purposes of DNA sample collection under existing law. This section addresses the deficiency of the current law in relation to terrorists by extending DNA sample collection to all persons convicted of terrorism crimes.

356 DEFINITION EXTENDING MARITIME JURISDICTION

This amendment would explicitly extend the special and maritime criminal jurisdiction of the United States to U.S. diplomatic and consular premises and related private residences overseas, to the extent an offense is committed by or against a U.S. national. When offenses are committed by or against a U.S. national abroad on U.S. government property, the country in which the offense occurs may have little interest in prosecuting the case. Unless the United States is able to prosecute such offenders, these crimes may go unpunished. This section clarifies inconsistent caselaw to establish that the United States may prosecute offenses committed in its missions abroad, by or against its nationals.

401 LAUNDERING THE PROCEEDS OF TERRORISM

Money-laundering under 18 U.S.C. § 1956 involves conducting or attempting to conduct a financial transaction knowing that the property involved represents the proceeds of an unlawful activity specified in subsection (c)(7) of the statute. Violations of 18 U.S.C. § 2339A, which prohibits providing material support to terrorists within the United States, are already included as specified unlawful activities. This section provides more complete coverage of money-laundering related to terrorism by adding as a further predicate offense 18 U.S.C. § 2339B, which prohibits providing material support or resources to foreign terrorist organizations.

402 MATERIAL SUPPORT FOR TERRORISM

18 U.S.C. § 2339A prohibits providing material support to terrorism. Under the statute's definitional subsection, the prohibited forms of support include (among many other things) "currency or other financial securities." This section adds an explicit reference to "monetary instruments" to the definition. The purpose of the amendment is to make it clear that the definition is to be taken expansively to encompass any and all forms of money, monetary instruments, or securities.

403 ASSETS OF TERRORISTS ORGANIZATIONS

Current law does not contain any authority tailored specifically to the confiscation of terrorist assets. Instead, currently, forfeiture is authorized only in narrow circumstances for the proceeds of murder, arson, and some terrorism offenses, or for laundering the proceeds of such offenses. However, most terrorism offenses do not yield "proceeds," and available current forfeiture laws require detailed tracing that is quite difficult for accounts coming through the banks of countries used by many terrorists.

This section increases the government's ability to strike at terrorist organizations' economic base by permitting the forfeiture of its property regardless of the source of the property, and regardless of whether the property has actually been used to commit a terrorism offense. This is similar in concept to the forfeiture now available under RICO. In parity with the drug forfeiture laws, the section also authorizes the forfeiture of property used or intended to be used to facilitate a terrorist act, regardless of its source. There is no need for a separate criminal forfeiture provision because criminal forfeiture is incorporated under current law by reference. The provision is retroactive to permit it to be applied to the events of September 11, 2001.

404 TECHNICALLY CLARIFICATION RELATING TO MATERIAL SUPPORT

The Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106–387, creates exceptions in the nation's Trade Sanctions Programs for food and agricultural products. This section makes it clear that the Trade Sanctions Reform and Export Enhancement Act of 2000 does not limit 18 U.S.C. §§ 2339A or 2339B. In other words, the exceptions to trade sanctions for these items does not prevent criminal liability for the provision of these items to support terrorist activity or to foreign terrorist organizations as described in 2339A and 2339B. This is not a change from existing law, but rather serves to foreclose any possible misunderstanding or argument that the Act in some manner trumps or limits the prohibition on providing material support or resources to terrorism.

407 TRADE SANCTIONS REFORM ACT CLARIFICATION

The Trade Sanctions Reform Act of 2000 requires the President to end unilateral agricultural and medical sanctions with respect to foreign entities and governments. This section would authorize Presidential control of agricultural and medical exports to all designated terrorists and narcotics entities wherever they are located. The section would authorize the President to retain sanctions with respect to exports of agricultural commodities, medicine and medical devices to designated terrorist entities.

408 EXTRATERRITORIAL JURISDICTION OVER FINANCIAL CRIMES

Financial crimes admits of no border, utilizing the integrated global financial network for ill purposes. This provision would apply the financial crimes prohibitions to conduct committed abroad, so long as the tools or proceeds of the crimes pass through or are in the United States.

501 OFFICE OF JUSTICE PROGRAMS BENEFITS TO DISABLED PEACE OFFICERS

This provision provides benefits to public safety officers disabled as a result of the September 11 attacks, as well as grants to the States for victim assistance. Consistent with 42 U.S.C. § 3796(b), the Department of Justice's FY2001 appropriations act places an aggregate cap of $2.4 million on the benefits that may be paid to public safety officers who have become totally disabled. A similar cap is found in both House and Senate FY2002 bills. Section 501 removes all caps with respect to officers who were totally disabled as a result of the September 11 attacks. This would authorize OJP annually to pay approximately $120,000 to each totally-disabled officer for life or while he remains totally disabled. In the same way, the Department of Justice's existing grant programs to assist States in aiding crime victims provide mechanisms to respond to the attacks, 42 U.S.C. § 10603b, but the amounts available to meet the need are insufficient. Section 501 would authorize the spending of up to $700 million from balances in the Crime Victims Fund (currently $1.4 billion) to assist States in their victim-relief efforts. The $700 million could be dispatched almost immediately to the States affected by the terrorist attacks, providing them with resources to supplement their own expenditures in aid of the victims.

Current law limits OJP's authority to work directly with service providers (as opposed to governments) under the circumstances created by the September 11 attacks, and to coordinate and manage emergency-response and other activities of its various components. 42 U.S.C. § 10603b(b). The law also is unclear as to proper exe-

cution of certain aspects of the Public Safety Officers Benefits program. Section 501 would amend OJP's authorities in these areas, specifically by authorizing OJP to work directly with service providers, in addition to governmental entities, to expedite terrorism victim relief efforts, by enhancing its authority to co-ordinate and manage emergency-response and other activities of its various components, and by clarifying provisions governing the provision of public safety officer benefits.

502 ATTORNEY GENERALS AUTHORITY TO PAY REWARDS

Section 106 of the FY2001 DOJ appropriations act places a per-reward cap of $2 million (and a $10 million annual aggregate cap) on rewards that the Attorney General may offer. A similar cap is found in both House and Senate FY2002 bills. Given the increasing sophistication of terrorist acts, these limitations may hamper the Justice Department's ability to bring the guilty to justice. Section 502 therefore would remove these caps. It would authorize the Attorney General to offer or pay rewards of any amount he or the President determines to be necessary for information or assistance.

503 LIMITED AUTHORITY TO PAY OVERTIME

For the past several years the Department of Justice Appropriations Acts have included provisions whereby Immigration and Naturalization Service funds could not be used to pay employees overtime pay in an amount in excess of $30,000 during a calendar year. In light of recent national emergencies, this section will lift this cap in order to give the Attorney General flexibility in determining whether to authorize overtime if necessary. The Department anticipates that the Attorney General will issue Departmental guidance regarding when it is appropriate to authorize overtime pay in an amount that would exceed the limitations that have been lifted.

504 SECRETARY OF STATE'S AUTHORITY OF PAY REWARDS

This section amends section 36 of the State Department's Basic Authorities Act of 1956 to enhance the ability of the Department of State to pay rewards to assist in bringing terrorists to justice. The section would expand the bases for which the Department could authorize payment of terrorism rewards, eliminate the overall limitation on the amount of funds that can be appropriated to the Department to carry out the rewards program, and eliminate the requirement that the Department distribute funds equally for the purpose of preventing acts of international terrorism and narcotics trafficking. This section also raises the amount the Department could offer and pay under the program from $5M to $10M and allows the Secretary to authorize payment of an award larger than $10M if the Secretary determines that doing so would be important to the national security interests of the United States.

505 ASSISTANCE TO COUNTRIES COOPERATING AGAINST INTERNATIONAL TERRORISM

Subsection (a) of this provision would give important new extraordinary authority for five years to the President to provide assistance or take other beneficial actions in favor of countries that support U.S. efforts to fight international terrorism. Subsection (b) would allow the President to provide anti-terrorism assistance to entities, as well as countries, without being subject to any restrictions. Subsection (c) allows the President to provide assistance for non-proliferation and export control activities without restrictions.

Other provisions, I believe require more study and cannot be considered hastily.

Chairman SENSENBRENNER. The material will be inserted in the record.

Mr. CONYERS. Thank you.

Chairman SENSENBRENNER. Let me say that those are the easy provisions, and if we uncouple the easy provisions from the difficult provisions, the difficult provisions are much less likely to reach an agreement and will fall off the table.

There being no further business——

Mr. BACHUS. Mr. Chairman?

Chairman SENSENBRENNER. Well——

Mr. BACHUS. I ask unanimous consent to introduce the Justice Department draft——

Chairman SENSENBRENNER. Well, without objection, the consultation draft will be included in the hearing as well.

Chairman SENSENBRENNER. The gentleman from New York.

Mr. NADLER. Yes. Thank you.

Let me also express my appreciation to the Chairman for this—for this decision. It's a very good decision, and I think it will help the Committee do its work properly. I gather that means there will be no markup in the Constitution Subcommittee?

Chairman SENSENBRENNER. The Chair intends that this legislation will be dealt with in the full Committee.

Mr. NADLER. And I just would urge that the markup be next Wednesday or Thursday so it would give us enough time, especially because some of us are going to be completely out Wednesday and Thursday because of Yom Kippur.

Chairman SENSENBRENNER. That is a very worthwhile suggestion. That—great minds work in the same direction, but having said this, I would hope that when we come back here Monday and Tuesday of next week, we have the informal discussions that I think are necessary to reach an agreement.

Mr. NADLER. That's the point. That's why I urge that——

Chairman SENSENBRENNER. That means that Tuesday and—is not going to be a free day.

Mr. NADLER. No. I said this week, Wednesday and Thursday is——

Chairman SENSENBRENNER. All right.

The gentleman from Texas.

Ms. JACKSON LEE. Mr. Chairman, as you know, one of the questions I asked was with respect to the 352 detainees, I think, under the INS. I asked whether they were under current law. I only raised that point, because I think you know, because you've been working on the INS restructuring, immigration is a very large piece of this. It might be worthwhile that as we look at the immediacy of the request, that the Justice Department has asked that if we have any suggestions, if we're writing legislation, that we might offer them as well, because immigration is so large a piece of this, particularly the border issues that we're looking at.

Chairman SENSENBRENNER. I would ask that the Republican Members put their suggestions through Kiko, Steve Pinkos, Jay Apperson and Will Moschella on our staff, and that the Democratic Members channel theirs through Perry Apelbaum and whomever else Mr. Conyers designates, and that way we get the matters on the table this week.

Ms. JACKSON LEE. Thank you for the extra time.

Chairman SENSENBRENNER. There will be a briefing at 4:30 that has been requested by the Minority Party. The briefing will be open to the public, but will not be a formal hearing. So this hearing is adjourned, and the Members are encouraged to be back at 4:30.

[Whereupon, at 4:10 p.m., the Committee was adjourned.]

APPENDIX

STATEMENTS SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Our nation is still coming to grips with the tragic events of September 11. Thousands of families have been waiting in a silent vigil for almost two weeks, hoping for good news about missing loved ones.

The country is unified in this fight against the terrorists and so is the Congress. Today, we are here to review the Attorney General's emergency request for new authorities to combat terrorism.

I am gratified to report that the Minority Leader has indicated to me that the Speaker is in no hurry to move this bill hastily and recognizes that this Committee needs to take its time and do its job right.

We must also be careful not to bite off more than we can chew. Past experience has taught us that today's weapon against terrorism may be tomorrow's weapon against law abiding Americans.

Just as I have seen an inspiring unity in the American people, I have seen other signs that are less encouraging. Hate crimes are on the rise and are reaching epidemic levels against Arab-Americans. We've also heard disturbing stories of ethnic profiling occurring at our nation's airports and abusive behavior by our own FBI. Our job is to make sure that these precious civil rights and civil liberties are not turned into another casualty of the terrorists.

And, while the Department of Justice has proposed some useful changes to current anti-terrorism law, numerous provisions are crafted far too broadly.

If we quickly cast aside our constitutional form of government then the enemy will not be the terrorists, it will be us. The terrorists will have accomplished in a "slow burn" what the fires of the World Trade Center could not—the destruction of our democratic form of government.

So, today, I want to urge all of the Members of the Committee to work through this issue in this time of tragedy in a bipartisan manner. These are difficult issues that require balance and caution. We are all motivated by our love of country, both the need to protect it from attack and the need to protect it from intrusions on its citizens civil liberties.

PREPARED STATEMENT OF THE HONORABLE BOB BARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

In the wake of the September 11th attacks, the Congress and the Administration rightly need to examine current laws, and the implementation of the authorities they convey on our federal government, to address why and how the United States government was unable to prevent the attacks from occurring. If there are gaps in federal law and regulation that need to be addressed, we should do so.

It is clear we do need to upgrade and strengthen certain laws and procedures. We must do what we can to untie the hands of our military and intelligence leaders to deal swiftly with serious and recognized threats to our national security. When international terrorist leaders, such as the ones who directed, supported, or caused these attacks, take the lives of American civilian and servicemen, it is entirely appropriate for us to remove them by any means necessary, without arbitrarily limiting our options. To that end, I introduced legislation, H.R. 19, the "Terrorist Elimination Act," to repeal those portions of executive orders purporting to prohibit the government from directly eliminating terrorist leaders.

Furthermore, we must understand how and why our intelligence community failed to have knowledge or warning of such a well-planned, multi-faceted strategic attack. The Congress provides billions of dollars each year to ensure the safety of our country and its citizens. For us to have had no knowledge ahead of time is simply unacceptable, and I fully expect—and we must demand—steps be taken to understand the source of these problems and immediately correct them.

Above all, what we must avoid, however, is the impulse move hastily on wholesale changes to search and seizure laws, and other constitutionally protected civil liberties, in an understandable but misguided attempt to thwart future attacks. Our immediate reaction must not be to blindly expand law enforcement's investigative and enforcement authority, but to examine how and why execution of current authority was not successful. Before we begin dismantling carefully crafted, constitutionally protected safeguards and eradicating fundamental rights to privacy, we should first examine why last week's incidents occurred.

The draft legislative proposal in its current form contains a number of provisions which I support. These provisions are narrowly focused and carefully limited to filling in identifiable gaps in current criminal laws relating to fighting terrorism. They do not sweep too broadly, they do not purport to change all criminal law or procedure, and they are reasonable.

However, the proposal also includes a number of provisions that, frankly, we just do not have enough information to make any determination as to their necessity or impact; and still other provisions contained in the draft proposal I believe are so fundamentally flawed, and sweep so broadly, they are not supportable. These problematic provisions were highlighted in a letter from a number of Committee Members, including me, to Chairman Sensenbrenner and Ranking Member Conyers. These provision dismantle constitutionally protected safeguards, eradicate fundamental rights to privacy, and intrude on civil liberties. Such provisions require significant further review, further clarification and further public debate. The Department of Justice needs to provide a more thorough explanation as to why such sweeping new statutory authorities are needed in these areas, why current authority is insufficient, and what are the consequences of enacting such language. Following this, the Committee and the Congress as a whole need sufficient time to examine and debate these proposals.

I urge the Chairman, the Committee and the Administration not to be wedded to the "fast-track" approach for this proposal. While some limited non-controversial provisions may be expedited, we will not be serving the American people well if we rush this proposal through without clear and convincing evidence legislative changes are needed.

Terrorism poses a serious threat, requiring a serious response. Now is the time for us to thoughtfully examine the long-term, fundamental way in which the United States intends to combat the forces of terror; but keeping in mind these changes and these powers will remain with us, as part of our legal system and our way of life, long after the terrorists who attacked America on September 11th, are in their graves.

Mr. Chairman, we are living in a new era, where we no longer face a single, powerful enemy. How the United States responds to this week's terrorist attacks in New York and Washington will define who we are as a nation not just for the immediate future, but for the foreseeable future. Let us legislate for the long haul, not the short run.

PREPARED STATEMENT OF JIM RYAN

The *Comprehensive Anti-Terrorism Act of 2001* provides Illinois with every possible resource to protect Illinois citizens against the threat of terrorism by severely punishing acts of terrorism, by preventing acts of terrorism through sophisticated intelligence tools and by extinguishing terrorist groups by cutting off their financial lifelines. The President has called upon the states to serve a vital role in the war against terrorism. This Act will allow Illinois to work closely and effectively with the Office of Homeland Security, the United States Department of Justice and other federal agencies to ensure the safety of citizens in Illinois and throughout the United States.

The Act creates the offense of terrorism, defined as any act that endangers human life or property and is intended to intimidate or coerce a civilian population, influence government policy or affect government conduct. The crime of terrorism is a class X felony, carrying a sentence of 20 years to natural life imprisonment, with the entire sentence to be served under Illinois' truth-in-sentencing laws. An act of terrorism which results in loss of human life carries a mandatory sentence of nat-

ural life in prison, with no possibility of parole. The act also makes terrorism an aggravating factor for first degree murder, meaning that a terrorist who takes an innocent life will be eligible for the death penalty.

As our nation mobilizes against the murky face of terrorism, this law will allow us to be proactive against this ever-changing threat. The strict intent provision requires that an act of terrorism be committed with the hope of bending the will of our citizens or our government. At the same time, the law means that any scheme to do that will be severely punished.

Recognizing that loosely-organized terrorists rely on sympathetic supporters for everything from financial aid to falsified identification docu ments to expert knowledge in critical areas, this law addresses those who choose to participate in the atrocities of terrorism from behind the scenes. Persons who solicit or provide such support for terrorism will face substantial mandatory prison terms.

Those who attempt to shield or protect known terrorists will also be held accountable. Under this law, hindering prosecution of terrorism is a Class X offense, with a mandatory prison sentence. The law also carries significant penalties for those who threaten acts of terrorism.

Our most urgent responsibility is to prevent these depraved acts before they occur. Therefore, we must equip our law enforcement community with the ability to identify and investigate those bent on attempting to terrorize our nation. This law helps law enforcement officials discover terrorists' plans before they can unleash their terror. The law simplifies procedures for obtaining search warrants to investigate terrorists and allows monitoring of communication between terrorists. The law preserves our cherished freedoms, by continuing to require court approval before such surveillance activities. But the law streamlines the processes for obtaining that approval. Given the suddenness and swiftness with which the recent attacks on our nation occurred, these changes could save thousands of innocent lives. The law would also permit the use of conversations recorded on an emergency basis without prior court approval to be used in the prosecution of terrorists. Such use would only be allowed after a full court hearing.

This law will also suffocate terrorist organizations by attacking their financial support. It incorporates civil forfeiture provisions, allowing judges to strip terrorists and terrorist groups of money and other property used or intended to be used in acts of terrorism. The law allows prosecutors to obtain court orders to freeze assets of suspected terrorist groups upon a showing of reasonable suspicion of terrorist activities. At the same time, the law strengthens provisions of Illinois' Charitable Solicitation and Charitable Trust acts, making it easier to identify organizations that are fronting as charities and stopping them from funneling money to terrorists.

The entire legislative package drafted by the Office of the Attorney General is being forwarded to prosecutors, law enforcement officials and government leaders throughout the state for their review and input. The final legislative product will be presented to the Illinois General Assembly when it re-convenes in November.

PREPARED STATEMENT OF LPA

Mr. Chairman and Members of the Committee:

LPA applauds the bipartisan efforts of this committee and the Congress to make prompt and appropriate changes to federal investigative and law enforcement authority to effectively detect, combat and stop terrorism against the United States. Our members stand ready to assist the Committee, Congress and the Bush Administration to do our part to prevent terrorist attacks from occurring on U.S. soil and elsewhere around the globe. We are pleased to submit this testimony to provide our members' perspectives on how these initiatives relate to employer communications networks, the fight against cyberterrorism, and the monitoring of workplace communications.

LPA is an association of the senior human resource executives of more than 200 leading corporations in the United States. LPA's purpose is to ensure that U.S. employment policy supports the competitive goals of its member companies and their employees. LPA member companies employ more than 12 million employees, or 12 percent of the private sector workforce. Our members have a substantial interest in how criminal law, such as the Electronic Communication Privacy Act, also known as the Wiretap Act, affects their policies with respect to their telephone and computer networks and facilitates their ability to cooperate with law enforcement officials where necessary.

Preventing Cyberterrorism Against Employers

LPA recently held discussions with its members regarding the employment-related issues that arose in the aftermath of the Attack on America. One of the questions raised was how employers should deal with the threat of cyberterrorism. As you know, the terrorists that perpetrated the attacks were computer savvy, and it is not unrealistic to speculate that terrorists may look to attack computer networks at some point in the future.

Recent news articles have indicated that the proposed anti-terrorism legislation would make it easier for federal law enforcement authorities to access the voice mail and e-mail messages of suspected terrorists. In addition to this authority, LPA members would appreciate any assistance that the federal government could provide in detecting and eliminating the threat of cyberterrorism. Although our members are sophisticated and have elaborate computer security procedures, it would be helpful if the government could set up a clearinghouse employers could access for unclassified information on cyberterrorism. It would also be helpful if victims of cyberterrorism could request help from federal investigative authorities when electronic foul play is suspected.

We understand from news accounts that there is a limited provision along these lines in the legislation drafted by the Justice Department. LPA urges the committee to review this issue either now or at some point in the future to prevent an attack that could have severe economic implications for individual companies and the country as a whole. Working together the private sector and the federal government can be a formidable force against terrorist acts.

Expanded Wiretap Authority and Electronic Monitoring by Employers

The news articles describing the anti-terrorism legislation also have indicated that the legislation would allow investigators to monitor the suspect's Internet or e-mail provider anywhere in the country by securing the approval of a judge in one jurisdiction. Presumably, an employer that maintains a voice mail, e-mail and Internet service that its employees use for business would be considered an Internet or e-mail provider under the legislation, meaning that employers may be required to provide access to their electronic systems in the interest of law enforcement. The need for such authority is understandable following the atrocities of September 11.

However, LPA wants to ensure that in the course of providing investigators access to this vital information, the anti-terrorism legislation does not impose unnecessary burdens on an employer's ability to monitor workplace communications. We do not believe that now is the time to engage in such a debate. Additionally, statistical and anecdotal information demonstrates that there is no need for such requirements.

Employers monitor their employees' use of workplace electronic communications primarily to protect against legal liability. According to a 2001 American Management Association survey,[1] 62 percent of employers engage in some type of computer and Internet monitoring and 68 percent of those monitor to protect against legal liability, especially liability based on sexual harassment. Employers also monitor to protect the security of company assets and maintain productivity. Defense contractors monitor to protect against leaks of classified information, and other employers seek to eliminate online gambling, excessive day trading, and participation in online auctions. Employers have even found employees running separate businesses using company-provided Internet service.

According to the AMA survey, nearly 90 percent of employers who monitor their employees give them notice. Employer notice helps educate employees about the employer's policy and reduces improper use of the employer's computer and telephone systems. In addition, this notice ensures that employees do not have false expectations of privacy.

Although the vast majority of employers provide their employees with notice of their monitoring practices, there have been recent legislative attempts to impose limits on how employers may monitor their employees. It would be unfortunate if, in the rush to complete action on the terrorism legislation, the committee also added language that imposed unnecessary burdens on employer monitoring practices. LPA believes instead that Congress should focus on the task at hand: completing the terrorism legislation and grappling with the other issues raised by the September 11 attacks.

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[1] American Management Association, 2001 AMA Survey: Workplace Monitoring & Surveillance: Policies and Practice, Aug. 2001, available at *<http://www.amanet.org/research/pdfs/emsfu—short.pdf>*.

CONCLUSION

Mr. Chairman, LPA supports your efforts to provide the tools needed by federal law enforcement and intelligence agencies to eliminate the threat of terrorism in the United States. We recommend that either now or in the near future, you look for ways to provide useful information and resources to employers on cyberterrorism. We also urge you to pursue your objective without imposing unnecessary burdens on employers' current workplace monitoring practices. LPA stands by to do our part in this important effort and in the larger war against terrorism.

MATERIAL SUBMITTED FOR THE HEARING RECORD

CONSULTATION DRAFT OF SEPTEMBER 20, 2001

ANTI-TERRORISM ACT OF 2001
SECTION-BY-SECTION ANALYSIS

TITLE I—INTELLIGENCE GATHERING

SUBTITLE A: ELECTRONIC SURVEILLANCE

Section 101. Modification of Authorities Relating to Use of Pen Registers And Trap And Trace Devices

This section authorizes courts to grant pen register/trap and trace orders that are valid anywhere in the nation, and subjects Internet communications to the same rules as telephone communications. At present, the government must apply for new pen/trap orders in every jurisdiction where an investigation is being pursued. Hence, law enforcement officers tracking a suspected terrorist in multiple jurisdictions must waste valuable time and resources by obtaining a duplicative order in each jurisdiction.

In greater detail, the section amends 18 U.S.C. § 3123(a) by allowing courts to grant orders that are valid "anywhere within the United States." Thus, the government would be able to obtain one pen register/trap and trace order that could be applied to any communications provider in the chain of providers carrying the suspects' communications. This amendment would increase tracing efficiency by eliminating the current need to apply for new orders each time the investigation leads to another jurisdiction. The section also includes a number of provisions which ensure that the pen/trap provisions apply to facilities other than telephone lines (e.g., the Internet). These amendments will promote effective tracing regardless of the media employed.

Section 102. Seizure of Voice Mail Messages Pursuant to Warrants

This section enables law enforcement personnel to seize suspected terrorists' voice mail messages pursuant to a search warrant. At present, 18 U.S.C. § 2510(1) anomalously defines "wire communication" to include "any electronic storage of such communication," meaning that the government must apply for a Title III wiretap order before it can obtain unopened voice mail messages held by a service provider. The section amends the definition of "wire communication" so that it no longer includes stored communications. It also amends 18 U.S.C. § 2703 to specify that the government may use a search warrant (instead of a wiretap order) to compel the production of unopened voicemail, thus harmonizing the rules applicable to stored voice and non-voice (e.g., e-mail) communications.

Section 103. Authorized Disclosure

This section facilitates the disclosure of Title III information to other components of the intelligence community in terrorism investigations. At present, 18 U.S.C. § 2517(1) generally allows information obtained via wiretap to be disclosed only to the extent that it will assist a criminal investigation. One must obtain a court order to disclose Title III information in non-criminal proceedings. Section 109 would modify the wiretap statutes to permit the disclosure of Title III-generated information to a non-law enforcement officer for such purposes as furthering an intelligence investigation. This will harmonize Title III standards with those of the Foreign Intelligence Surveillance Act (FISA), which allows such information-sharing. Allowing disclosure under Title III is particularly appropriate given that the requirements for obtaining a Title III surveillance order in general are more stringent than for a FISA order, and because the attendant privacy concerns in either situation are similar and are adequately protected by existing statutory provisions.

Section 104. Savings Provision

This provision clarifies that the collection of foreign intelligence information is governed by foreign intelligence authorities rather than by criminal procedural statutes, as the current statutory scheme envisions.

Section 105. Use of Wiretap Information From Foreign Governments

Under current case law, federal prosecutors appear to have the ability to use electronic surveillance conducted by foreign governments in criminal proceedings. As criminal law enforcement becomes more of a global effort, such information will come to play a larger role in federal prosecutions. To ensure uniformity of federal

practice, this section codifies the principle that United States prosecutors may use against American citizens information collected by a foreign government even if the collection would have violated the Fourth Amendment. Under the proposal, such information may not be used if it was obtained with the knowing "participation" or at the direction of American law enforcement personnel, if gathered in violation of constitutional protections. In addition, the provision allows the use of information obtained in compliance with the law of the country in which it was obtained.

Section 106. Interception of Computer Trespasser Communications

Current law may not allow victims of computer trespassing to request law enforcement assistance in monitoring unauthorized attacks as they occur. Because service providers often lack the expertise, equipment, or financial resources required to monitor attacks themselves as permitted under current law, they often have no way to exercise their rights to protect themselves from unauthorized attackers. Moreover, such attackers can target critical infrastructures and engage in cyberterrorism. To correct this problem, and help to protect national security, the proposed amendments to the wiretap statute would allow victims of computer attacks to authorize persons "acting under color of law" to monitor trespassers on their computer systems in a narrow class of cases.

Section 107. Scope of Subpoenas for Records of Electronic Communications

Current law allows the government to use a subpoena to compel communications providers to disclose a small class of records that pertain to electronic communications, limited to such records as the customer's name, address, and length of service. 18 U.S.C. § 2703(c)(1)(C). Remarkably, investigators cannot use a subpoena to obtain such records as credit card number or other form of payment. In many cases, users register with Internet service providers using false names, making the form of payment critical to determining the user's true identity. Under current law, this information can only be obtained by the slower and more cumbersome process of a court order.

In fast-moving investigation such as terrorist bombings—in which Internet communications are a critical method of identifying conspirators and in determining the source of the attacks—the delay necessitated by the use of court orders can often be important. Obtaining billing and other information can identify not only the perpetrator but also give valuable information about the financial accounts of those responsible and their conspirators. Therefore, the proposed amendments to § 2703(c)(1)(C) in this section would update and broaden the class of records that law enforcement authorities may obtain with a subpoena.

Section 108. Nationwide Service of Search Warrants for Electronic Evidence

Current law requires the government to use a search warrant to compel a provider to disclose unopened e-mail. 18 U.S.C. § 2703(a). Because Federal Rule of Criminal Procedure 41 requires that the "property" to be obtained be "within the district" of the issuing court, however, the rule may not allow the issuance of § 2703(a) warrants for e-mail located in other districts. Thus, for example, where an investigator in Boston is seeking electronic e-mail in the Yahoo! account of a suspected terrorist, he may need to coordinate with agents, prosecutors, and judges in the Northern District of California, none of whom have any other involvement in the investigation. This electronic communications information can be critical in establishing relationships, motives, means, and plans of terrorists. Moreover, it is equally relevant to cyber-incidents in which a terrorist motive has not (but may well be) identified. Finally, even cases that require the quickest response (kidnappings, threats, or other dangers to public safety or the economy) may rest on evidence gathered under § 2703(a). To further public safety, this section accordingly authorizes courts with jurisdiction over investigations to compel evidence directly, without requiring the intervention of their counterparts in the districts where major Internet service providers are located.

Section 109. Clarification of Scope

Law enforcement must have the capability to trace, intercept, and obtain records of the communications of terrorists and other criminals with great speed, even if they choose to use a cable provider for their telephone and Internet service. This section amends the Cable Communications Policy Act ("Cable Act") to clarify that when a cable company acts as a telephone company or an Internet service provider, it must comply with the same laws governing the interception and disclosure of wire and electronic communications that apply to any other telephone company or Internet service provider. The Cable Act, passed in 1984 to regulate various aspects of the cable television industry, could not take into account the changes in technology

that have occurred over the last seventeen years. Cable television companies now often provide Internet access and telephone service in addition to television programming. Because of perceived conflicts between the Cable Act and the laws that govern law enforcement's access to communications and records of communications carried by cable companies, cable providers have refused to comply with lawful court orders, thereby slowing or ending critical investigations.

Section 110. Emergency Disclosure of Electronic Communications

Existing law contains no provision that allows providers of electronic communications service to disclose the communications (or records relating to such communications) of their customers or subscribers in emergencies that threaten death or serious bodily injury. This section amends 18 U.S.C. § 2702 to authorize such disclosures if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.

Current law also contains an odd disconnect: a provider may disclose the *contents* of the customer's communications in order to protect its rights or property but the current statute does not expressly permit a provider to voluntarily disclose *non-content* records (such as a subscriber's login records). 18 U.S.C. § 2702(b)(5). This problem substantially hinders the ability of providers to protect themselves from cyberterrorists and criminals. Yet the right to disclose the contents of communications necessarily implies the less intrusive ability to disclose non-content records. In order to promote the protection of our nation's critical infrastructures, this section's amendments allow communications providers to voluntarily disclose both content and non-content records to protect their computer systems.

SUBTITLE B: FOREIGN INTELLIGENCE SURVEILLANCE

Section 151. Period of Orders of Electronic Surveillance of Non-United States Persons Under Foreign Intelligence Surveillance

This section reforms a critical aspect of the Foreign Intelligence Surveillance Act (FISA). It will enable the Foreign Intelligence Surveillance Court (FISC), which presides over applications made by the U.S. government under FISA, to authorize the search and surveillance in the U.S. of officers and employees of foreign powers and foreign members of international terrorist groups for up to a year. Currently, the FISC may only authorize such searches and surveillance for up to 45 days and 90 days, respectively. The proposed change would bring the authorization period in line with that allowed for search and surveillance of the foreign establishments for which the foreign officers and employees work. The proposed change would have no effect on electronic surveillance or physical searches of U.S. citizens or permanent resident aliens.

Section 152. Multi-Point Authority

This provision expands the obligations of third parties to furnish assistance to the government under FISA. Under current FISA provisions, the government can seek information and assistance from common carriers, landlords, custodians and other persons specified in court-ordered surveillance. Section 152 would amend FISA to expand existing authority to allow, "in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person," that a common carrier, landlord, custodian or other person not specified in the Court's order be required to furnish the applicant information and technical assistance necessary to accomplish electronic surveillance in a manner that will protect its secrecy and produce a minimum of interference with the services that such person is providing to the target of electronic surveillance. This would enhance the FBI's ability to monitor international terrorists and intelligence officers who are trained to thwart surveillance by rapidly changing hotel accommodations, cell phones, Internet accounts, etc., just prior to important meetings or communications. Under the current law, the government would have to return to the FISA Court for an order that named the new carrier, landlord, etc., before effecting surveillance. Under the proposed amendment, the FBI could simply present the newly discovered carrier, landlord, custodian, or other person with a generic order issued by the Court, and could then effect FISA coverage as soon as technically feasible.

Section 153. Foreign Intelligence Information

Current law requires that FISA be used only where foreign intelligence gathering is the sole or primary purpose of the investigation. This section will clarify that the certification of a FISA request is supportable where foreign intelligence gathering

is "a" purpose of the investigation. This change would eliminate the current need continually to evaluate the relative weight of criminal and intelligence purposes, and would facilitate information sharing between law enforcement and foreign intelligence authorities which is critical to the success of anti-terrorism efforts.

Section 154. Foreign Intelligence Information Sharing

This section provides that foreign intelligence information obtained in criminal investigations, including grand jury and electronic surveillance information, may be shared with other federal government personnel having responsibilities relating to the defense of the nation and its interests.

With limited exceptions, it is presently impossible for criminal investigators to share information obtained through a grand jury (including through the use of grand jury subpoenas) and information obtained from electronic surveillance authorized under Title III with the intelligence community. This limitation will be very significant in some criminal investigations. For example, grand jury subpoenas often are used to obtain telephone, computer, financial, and other business records in organized crime investigations. Thus, these relatively basic investigative materials are inaccessible for examination by intelligence community analysts working on related transnational organized crime groups. A similar problem occurs in computer intrusion investigations: grand jury subpoenas and Title III intercepts are used to collect transactional data and to monitor the unknown intruders. The intelligence community will have an equal interest in such information, because the intruder may be acting on behalf of a foreign power.

Section 155. Pen Register And Trap And Trace Authority

When added to FISA two years ago, the pen register/trap and trace section was intended to mirror the criminal pen/trap authority defined in 18 U.S.C. § 3123. The FISA authority differs from the criminal authority in that it requires, in addition to a showing of relevance, an additional factual showing that the communications device has been used to contact an "agent of a foreign power" engaged in international terrorism or clandestine intelligence activities. This has the effect of making the FISA pen/trap authority much more difficult to obtain. In fact, the process for obtaining FISA pen/trap authority is only slightly less burdensome than the process for obtaining full electronic surveillance authority under FISA. This stands in stark contrast to the criminal pen/trap authority, which can be obtained quickly from a local court, on the basis of a certification that the information to be obtained is relevant to an ongoing investigation. The amendment simply eliminates the "agent of a foreign power" prong from the predication, and thus makes the FISA authority more closely track the criminal authority.

Section 156. Business Records

The "business records" section of FISA (50 U.S.C. §§ 1861 and 1862) requires a formal pleading to the Court and the signature of a FISA judge (or magistrate). In practice, this makes the authority unavailable for most investigative contexts. The time and difficulty involved in getting such pleadings before the Court usually outweighs the importance of the business records sought. Since its enactment, the authority has been sought less than five times. This section would delete the old authority and replace it with a generic "administrative subpoena" authority for documents and records. This authority, modeled on the administrative subpoena authority available to drug investigators pursuant to Title 21, allows the Attorney General to compel production of such records upon a finding that the information is relevant.

Section 157. Miscellaneous National Security Authorities

At the present time, National Security Letter (NSL) authority exists in three separate statutes: the Electronic Communications Privacy Act (for telephone and electronic communications records), the Financial Right to Privacy Act (for financial records), and the Fair Credit Reporting Act (for credit records). Like the FISA pen register/trap and trace authority described above, NSL authority requires both a showing of relevance and a showing of links to an "agent of a foreign power." In this respect, they are substantially more demanding than the analogous criminal authorities, which require only a certification of relevance. Because the NSLs require documentation of the facts supporting the "agent of a foreign power" predicate and because they require the signature of a high-ranking official at FBI headquarters, they often take months to be issued. This is in stark contrast to criminal subpoenas, which can be used to obtain the same information, and are issued rapidly at the local level. In many cases, counterintelligence and counterterrorism investigations suffer substantial delays while waiting for NSLs to be prepared, returned from headquarters, and served. The section would streamline the process of

obtaining NSL authority, and also clarify that the FISA Court can issue orders compelling the production of consumer reports.

Section 158. Disclosure of Educational Records

The government believes that there may be information contained in student education records maintained by educational agencies and institutions and in education surveys reported to the National Center for Education Statistics that could be important in the criminal investigation of the terrorist attack of September 11, 2001, as well as to national security. However, section 408 of the National Statistics Act clearly prohibits disclosure of such information to appropriate Federal officials for these purposes; and, of equal importance, section 408 criminalizes the disclosure of any such prohibited information. This section will effectively override section 408 for this limited purpose.

Section 444 (Protection of the Rights and Privacy of Students and Parents, commonly referred to as FERPA) of the General Education Provisions Act generally prohibits the release of personally identifiable information from student education records without the consent of the student (or, in the case of a minor, the student's parents). While there are certain exceptions to this prohibition, it is not clear that these exceptions are fully applicable to the pressing need to share such information from student education records relating to terrorism with the appropriate Federal officials for the purpose of criminal investigation and prosecution and ensuring national security. This section will effectively override section 444 for this limited purpose.

Section 159. Presidential Authorities

This section is designed to accomplish two principal objectives. First, the section restores to the President, in limited circumstances involving armed hostilities or attacks against the United States, the power to confiscate and vest in the United States the property of enemies during times of national emergency, which was contained in the Trading with the Enemy Act, 50 App. U.S.C. § 5(b) (TWEA) until 1977. Until the International Economic Emergency Act (IEEPA) was passed in 1977, section 5(b) permitted the President to vest enemy property in the United States during time of war or national emergency. When IEEPA was passed, it did not expressly include a provision permitting the vesting of property in the United States, and section 5(b) of TWEA was amended to apply only "[d]uring the time of war." 50 App. U.S.C. § 5(b).

This new provision tracks the vesting language currently in section 5(b) of TWEA and permits the President, only in the limited circumstances when the United States is engaged in military hostilities or has been subject to an attack, to confiscate property of any foreign country, person, or organization involved in hostilities or attacks on the United States. Like the original provision in TWEA, it is an exercise of Congress's war power under Article I, section 8, clause 11of the Constitution and is designed to apply to unconventional warfare where Congress has not formally declared war against a foreign nation.

The second principal purpose of this amendment to IEEPA is to ensure that reviewing courts may base their rulings on an examination of the complete administrative record in sensitive national security or terrorism cases without requiring the United States to compromise classified information. New subsection (c) would authorize a reviewing court, in the process of verifying that determinations made by the executive branch were based upon substantial evidence and were not arbitrary or capricous, to consider classified evidence ex parte and in camera. This would ensure that reviewing courts have the best and most complete information upon which to base their decisions without forcing the United States to choose between compromising highly sensitive intelligence information or declining to take action against individuals or entities that may present a serious threat to the United States or its nationals. A similar accommodation mechanism was enacted by Congress in the Anti-Terrorism and Effective Death Penalty Act of 1996, 8 U.S.C. § 1189(b)(2).

TITLE II—IMMIGRATION

Section 201. Definitions Relating to Terrorism

The Alien Terrorist Removal Court is the only mechanism available to the government in which classified evidence can be used as part of an affirmative case to remove an alien involved in terrorism. In existence since 1996, it has never been used, in part because of the narrow definition of "terrorist" which limits the applicability of the Court. The current definition is limited to individuals who provide material support for a "terrorist activity." This section broadens that definition to include anyone who affords material support to an organization that the individual knows

or should know is a terrorist organization, regardless of whether or not the purported purpose for the support is related to terrorism. These revised definitions will apply in all types of removal proceedings (before the Alien Terrorist Removal Court, immigration courts, and the INS). This legislation seeks to stop the provision of support to terrorist organizations through sham non-terrorist activities. The legislation further defines terrorist organization and provides a mechanism for the designation and redesignation of groups as terrorist organizations.

Section 202. Mandatory Detention of Suspected Terrorists

Currently, persons deportable or inadmissible for terrorism-related reasons must be detained. This section expands this mandatory detention to those individuals the Attorney General determines pose a threat to national security, whether or not the alien is eligible for or is granted relief from removal. The Attorney General is vested with the discretion to make these time-sensitive decisions and to detain individuals who are found to pose a threat to national security until they are actually removed or until the Attorney General determines the person no longer poses a threat.

Section 203. Habeas Corpus and Judicial Review

Under current law, determinations to remove or detain terrorists have generally been deemed by the courts to be reviewable by habeas corpus proceedings which can be brought in any applicable federal jurisdiction nationwide. The availability of multiple jurisdictions for review creates the potential for inconsistent standards to be developed by reviewing courts, which interferes with the government's ability to pursue detention and removal under a known and consistent standard. The proposed provision would not limit the scope of judicial review, but would vest exclusive judicial review of detention and removal proceedings with respect to aliens certified by the Attorney General as national security risks in the federal courts for the District of Columbia. The reservation of all alien terrorist cases to the District of Columbia conforms to general principles of administrative law, and to the existing provisions of the Immigration and Nationality Act. It is common for judicial review of agency action to be confined to a single court, and the Immigration and Nationality Act already limits challenges to expedited removal and Alien Terrorist Removal Court cases to the District of Columbia.

Section 204. Applicability

This provision makes it clear that this legislation will apply to all aliens regardless of when they entered the United States or when they committed the terrorist activity.

Section 205. Multilateral Cooperation Against Terrorists

This section will enhance our ability to combat terrorism and crime worldwide by providing new exceptions to the laws regarding disclosure of information from visa records. Under current law the Secretary of State may only disclose such information when doing so is directly related to the administration or enforcement of U.S. laws or a court makes the request. Often these showings are difficult to make in responding to an information request from a foreign government due to constraints of time or foreign procedure which preclude the involvement of a foreign court. This section grants the Secretary of State discretion to provide such information to foreign officials on a case-by-case basis for the purpose of fighting international terrorism or crime. It would also allow the Secretary to provide countries with which he negotiates specific agreements to have more general access to information from the State Department's lookout databases where the country will use such information only to deny visas to persons seeking to enter its territory.

Section 206. Interagency Data Sharing

This amendment to the Immigration and Nationality Act (INA) would recognize that the interagency cooperation provided for in INA Section 105 now serves a broader border security function, and would enhance that function by improving consular officers' access to crime information. This is consistent with the fact that securing the borders of the U.S. against the entry of international terrorists, traffickers in narcotics, weapons or persons, international organized crime members, and illegal entrants is not the responsibility of any single federal agency. Consular officers abroad must facilitate legitimate travel while preventing the travel of individuals who present security or other threats to U.S. government interests. These officers need electronic access to information from border security and law enforcement agencies that will assist in identifying high-risk travelers, including information maintained by the FBI on aliens suspected of committing crimes in the U.S. (*e.g.,* information contained in the NCIC-III and Wanted Persons File databases).

Without this information, a consular officer could unknowingly grant a visa to a known or suspected criminal.

TITLE III—CRIMINAL JUSTICE

SUBTITLE A: SUBSTANTIVE CRIMINAL LAW

Section 301. No Statute of Limitations For Prosecuting Terrorism Offenses

This section amends 18 U.S.C. § 3286 to provide that terrorism offenses may be prosecuted without limitation of time. This will make it possible to prosecute the perpetrators of terrorist acts whenever they are identified and apprehended.

The section expressly provides that it is applicable to offenses committed before the date of enactment of the statute, as well as those committed thereafter. This retroactivity provision ensures that no limitation period will bar the prosecution of crimes committed in connection with the September 11, 2001 terrorist attacks. The constitutionality of such retroactive applications of changes in statutes of limitations is well-settled. See, e.g., *United States v. Grimes,* 142 F.3d 1342, 1350–51 (11th Cir. 1998); *People v. Frazer,* 982 P.2d 180 (Cal. 1999).

Existing federal law (18 U.S.C. § 3282) bars prosecuting most offenses after five years. 18 U.S.C. § 3286, as currently formulated, extends the limitation period for prosecution for certain offenses that may be committed by terrorists—but only to eight years. While this is a limited improvement over the five-year limitation period for most federal offenses, it is patently inadequate in relation to the catastrophic human and social costs that frequently follow from such crimes as destruction of aircraft (18 U.S.C. § 32), aircraft hijackings (42 U.S.C. §§ 46502, 46504–06), attempted political assassinations (18 U.S.C. §§ 351 , 1116, 1751), or hostage taking (18 U.S.C. § 1203). These are not minor acts of misconduct which can properly be forgiven or forgotten merely because the perpetrator has avoided apprehension for some period of time. Anomalously, existing law provides longer limitation periods for such offenses as bank frauds and certain artwork thefts (18 U.S.C. §§ 3293–94) than it does for the crimes characteristically committed by terrorists.

In many American jurisdictions, the limitation periods for prosecution for serious offenses are more permissive than those found in federal law, including a number of states which have no limitation period for the prosecution of felonies generally. While this section does not go so far, it does eliminate the limitation period for prosecution of the major crimes that are most likely to be committed by terrorists ("Federal terrorism offenses"), as specified in section 309 of this bill.

Section 302. Alternative Maximum Penalties For Terrorism Crimes

Under existing law, the maximum prison terms for federal offenses are normally determined by specifications in the provisions which define them. These provisions can provide inadequate maxima in cases where the offense is aggravated by its terrorist character or motivation. This section accordingly adds a new subsection (e) to 18 U.S.C. § 3559 which provides alternative maximum prison terms, including imprisonment for any term of years or for life, for crimes that are likely to be committed by terrorists. This is analogous to the maximum fine provisions of 18 U.S.C. § 3571(b)-(c)—which supersede lower fine amounts specified in the statutes defining particular offenses—and will more consistently ensure the availability of sufficiently high maximum penalties in terrorism cases. As in several other provisions of this bill, the list of the serious crimes most frequently committed by terrorists set forth in section 309 of the bill ("Federal terrorism offenses") is used in defining the scope of the provision.

This section affects only the maximum penalty allowed by statute. It does not limit the authority of the Sentencing Commission and the courts to tailor the sentences imposed in particular cases to offense and offender characteristics.

Section 303. Penalties For Terrorist Conspiracies

The maximum penalty under the general conspiracy provision of federal criminal law (18 U.S.C. § 371) is five years, even if the object of the conspiracy is a serious crime carrying a far higher maximum penalty. For some individual offenses and types of offenses, special provisions authorize conspiracy penalties equal to the penalties for the object offense—see, e.g., 21 U.S.C. § 846 (drug crimes)—but there is no consistently applicable provision of this type for the crimes that are likely to be committed by terrorists.

This section accordingly adds a new § 2332c to the terrorism chapter of the criminal code—parallel to the drug crime conspiracy provision in 21 U.S.C. § 846—which provides maximum penalties for conspiracies to commit terrorism crimes that are equal to the maximum penalties authorized for the objects of such conspiracies. This

will more consistently provide adequate penalties for terrorist conspiracies. As in various other provisions in this bill, the relevant class of offenses is specified by use of the notion of "Federal terrorism offense," which is defined in section 309 of the bill.

Section 304. Terrorism Crimes as Rico Predicates

The list of predicate federal offenses for RICO, appearing in 18 U.S.C. § 1961(1), includes none of the offenses which are most likely to be committed by terrorists. This section adds terrorism crimes to the list of RICO predicates, so that RICO can be used more frequently in the prosecution of terrorist organizations. As in various other provisions, the list of offenses in section 309 of the bill ("Federal terrorism offenses") is used in identifying the relevant crimes.

Section 305. Biological Weapons

Current law prohibits the possession, development, acquisition, etc., of biological agents or toxins "for use as a weapon." 18 U.S.C. § 175. This section amends the definition of "for use as a weapon" to include all situations in which it can be proven that the defendant had any purpose other than a prophylactic, protective, or peaceful purpose. This will enhance the government's ability to prosecute suspected terrorists in possession of biological agents or toxins, and conform the scope of the criminal offense in 18 U.S.C. § 175 more closely to the related forfeiture provision in 18 U.S.C. § 176. Moreover, the section adds a subsection to 18 U.S.C. § 175 which defines an additional offense of possessing a biological agent or toxin of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective or other peaceful purpose. The section also enacts a new statute, 18 U.S.C. § 175b, which generally makes it an offense for a person to possess a listed biological agent or toxin if the person is disqualified from firearms possession under 18 U.S.C. § 922(g).

The section further provides that the Department of Heath and Human Services enhance its role in bioterrorism prevention by requiring registration of all research and public health laboratories and manufacturing facilities that possess certain hazardous microorganisms and toxins (the "Select Agents") that have a high national security risk; requiring all such registered laboratories and manufacturing facilities to meet regulatory standards regarding the physical environment within which such Select Agents are maintained or used; specifying the qualifications of individuals authorized to work with such Select Agents; and specifying the institutional procedures for access to such Select Agents or the facilities in which they are maintained or used.

Section 306. Support of Terrorism Through Expert Advice or Assistance

18 U.S.C. § 2339A prohibits providing material support or resources to terrorists. The existing definition of "material support or resources" is generally not broad enough to encompass expert services and assistance—for example, advice provided by a person with expertise in aviation matters to facilitate an aircraft hijacking, or advice provided by an accountant to facilitate the concealment of funds used to support terrorist activities. This section accordingly amends 18 U.S.C.§ 2339A to include expert services and assistance, making the offense applicable to experts who provide services or assistance knowing or intending that the services or assistance is to be used in preparing for or carrying out terrorism crimes. The section also amends 18 U.S.C. § 2339A to conform its coverage of terrorism crimes to the more complete list specified in section 309 of the bill ("Federal terrorism offenses").

Section 307. Prohibition Against Harboring Terrorists

18 U.S.C. § 792 makes it an offense to harbor or conceal persons engaged in espionage. There is no comparable provision for terrorism, though the harboring of terrorists creates a risk to the nation readily comparable to that posed by harboring spies. This section accordingly amends 18 U.S.C. § 792 to make the same prohibition apply to harboring or concealing persons engaged in federal terrorism offenses (as defined in section 309 of the bill).

Section 308. Post-Release Supervision of Terrorists

Existing federal law (18 U.S.C. § 3583(b)) generally caps the maximum period of post-imprisonment supervision for released felons at 3 or 5 years. Thus, in relation to a released but still unreformed terrorist, there is no means of tracking the person or imposing conditions to prevent renewed involvement in terrorist activities beyond a period of a few years. The drug laws (21 U.S.C. § 841) mandate longer supervision periods for persons convicted of certain drug trafficking crimes, and specify no upper

limit on the duration of supervision, but there is nothing comparable for terrorism offenses.

This section accordingly adds a new subsection to 18 U.S.C. § 3583 to authorize longer supervision periods, including potentially lifetime supervision, for persons convicted of terrorism crimes. This would permit appropriate tracking and oversight following release of offenders whose involvement with terrorism may reflect lifelong ideological commitments. As in other provisions in this bill, the covered class of crimes is federal terrorism offenses, which are specified in section 309 of the bill.

This section affects only the maximum periods of post-release supervision allowed by statute. It does not limit the authority of the Sentencing Commission and the courts to tailor the supervision periods imposed in particular cases to offense and offender characteristics, and the courts will retain their normal authority under 18 U.S.C. § 3583(e)(1) to terminate supervision if it is no longer warranted.

Section 309. Definitions

This section adds a new § 25 to title 18 of the United States Code, which defines the term "Federal terrorism offense." The term is used in various provisions in this bill. The definition is designed to cover the major crimes which are most frequently involved in or associated with terrorism. The definition in the new 18 U.S.C. § 25 is largely based on an existing listing of terrorism-related offenses in 18 U.S.C. § 2332b(g)(5)(B). The section also adds to 18 U.S.C. § 2331 a definition of "domestic terrorism," a term used in a number of the bill's provisions.

SUBTITLE B: CRIMINAL PROCEDURE

Section 351. Single-Jurisdiction Search Warrants For Terrorism

Rule 41(a) of the Federal Rules of Criminal Procedure currently requires a search warrant to be obtained within a district for searches within that district. The only exception is for cases in which the property or person is presently within the district but might leave the district before the warrant is executed.

The restrictiveness of the existing rule creates unnecessary delays and burdens for the government in the investigation of terrorist activities and networks that span a number of districts, since warrants must be separately obtained in each district. This section resolves that problem by providing that warrants can be obtained in any district in which activities related to the terrorism may have occurred, regardless of where the warrants will be executed.

Section 352. Notice

The law that currently governs notice to subjects of warrants, where there is a showing to the court that immediate notice would jeopardize an ongoing investigation or otherwise interfere with lawful law-enforcement activities, is a mix of inconsistent rules, practices, and court decisions varying widely from jurisdiction to jurisdiction across the country. This greatly hinders the investigation of many terrorism cases and other cases.

This section resolves this problem by establishing a statutory, uniform standard for all such circumstances. It incorporates by reference the familiar, court-enforced standards currently applicable to stored communications under 18 U.S.C. § 2705, and applies them to all instances where the court is satisfied that immediate notice of execution of a search warrant would jeopardize an ongoing investigation or otherwise interfere with lawful law-enforcement activities.

Section 353. DNA Identification of Terrorists

The statutory provisions governing the collection of DNA samples from convicted federal offenders (42 U.S.C. § 14135a(d)) are restrictive, and do not include persons convicted for the crimes that are most likely to be committed by terrorists. DNA samples cannot now be collected even from persons federally convicted of terrorist murders in most circumstances. For example, 49 U.S.C. § 46502, which applies to terrorists who murder people by hijacking aircraft,

18 U.S.C. § 844(i), which applies to terrorists who murder people by blowing up buildings, and 18 U.S.C. § 2332, which applies to terrorists who murder U.S. nationals abroad, are not included in the qualifying federal offenses for purposes of DNA sample collection under existing law. This section addresses the deficiency of the current law in relation to terrorists by extending DNA sample collection to all persons convicted of terrorism crimes.

Section 354. Grand Jury Matters

This section makes changes in Rule 6(e) of the Federal Rules of Criminal Procedure, relating to grand jury secrecy, to facilitate the sharing of information with fed-

eral law enforcement, intelligence, protective, national defense, and immigration personnel in terrorism and national security cases. The section is in part complimentary to section 154 of the bill, relating to sharing of foreign intelligence information, and reflects a similar purpose of promoting a coordinated governmental response to terrorist and national security threats.

Section 355. Extraterritoriality

Under existing law, some terrorism crimes have extraterritorial applicability, and can be prosecuted by the United States regardless of where they are committed—for example, 18 U.S.C. §§ 175 (biological weapons offense) and 2332a (use of weapons of mass destruction), contain language which expressly contemplates their application to conduct occurring outside of the United States. However, there are no explicit extraterritoriality provisions in the statutes defining many other offenses which are likely to be committed by terrorists. This section helps to ensure that terrorist acts committed anywhere in the world can be effectively prosecuted by specifying that there is extraterritorial jurisdiction for the prosecution of all federal terrorism offenses.

Section 356. Definition.

This amendment would explicitly extend the special and maritime criminal jurisdiction of the United States to U.S. diplomatic and consular premises and related private residences overseas, to the extent an offense is committed by or against a U.S. national. When offenses are committed by or against a U.S. national abroad on U.S. government property, the country in which the offense occurs may have little interest in prosecuting the case. Unless the United States is able to prosecute such offenders, these crimes may go unpunished. This section clarifies inconsistent caselaw to establish that the United States may prosecute offenses committed in its missions abroad, by or against its nationals.

TITLE IV—FINANCIAL INFRASTRUCTURE

Section 401. Laundering The Proceeds of Terrorism.

Money-laundering under 18 U.S.C. § 1956 involves conducting or attempting to conduct a financial transaction knowing that the property involved represents the proceeds of an unlawful activity specified in subsection (c)(7) of the statute. Violations of 18 U.S.C. § 2339A, which prohibits providing material support to terrorists within the United States, are already included as specified unlawful activities. This section provides more complete coverage of money-laundering related to terrorism by adding as a further predicate offense 18 U.S.C. § 2339B, which prohibits providing material support or resources to foreign terrorist organizations.

Section 402. Material Support For Terrorism

18 U.S.C. § 2339A prohibits providing material support to terrorism. Under the statute's definitional subsection, the prohibited forms of support include (among many other things) "currency or other financial securities." This section adds an explicit reference to "monetary instruments" to the definition. The purpose of the amendment is to make it clear that the definition is to be taken expansively to encompass any and all forms of money, monetary instruments, or securities.

Section 403. Assets of Terrorist Organizations

Current law does not contain any authority tailored specifically to the confiscation of terrorist assets. Instead, currently, forfeiture is authorized only in narrow circumstances for the proceeds of murder, arson, and some terrorism offenses, or for laundering the proceeds of such offenses. However, most terrorism offenses do not yield "proceeds," and available current forfeiture laws require detailed tracing that is quite difficult for accounts coming through the banks of countries used by many terrorists.

This section increases the government's ability to strike at terrorist organizations' economic base by permitting the forfeiture of its property regardless of the source of the property, and regardless of whether the property has actually been used to commit a terrorism offense. This is similar in concept to the forfeiture now available under RICO. In parity with the drug forfeiture laws, the section also authorizes the forfeiture of property used or intended to be used to facilitate a terrorist act, regardless of its source. There is no need for a separate criminal forfeiture provision because criminal forfeiture is incorporated under current law by reference. The provision is retroactive to permit it to be applied to the events of September 11, 2001.

Section 404. Technical Clarification Relating to Provision of Material Support to Terrorism

The Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106–387, creates exceptions in the nation's Trade Sanctions Programs for food and agricultural products. This section makes it clear that the Trade Sanctions Reform and Export Enhancement Act of 2000 does not limit 18 U.S.C. §§ 2339A or 2339B. In other words, the exceptions to trade sanctions for these items does not prevent criminal liability for the provision of these items to support terrorist activity or to foreign terrorist organizations as described in 2339A and 2339B. This is not a change from existing law, but rather serves to foreclose any possible misunderstanding or argument that the Act in some manner trumps or limits the prohibition on providing material support or resources to terrorism.

Section 405. Disclosure of Tax Information in Terrorism And National-Security Investigations

Taxpayer records maintained by the Internal Revenue Service (IRS) are subject to strict rules regarding disclosure to other Government agencies, detailed in 26 U.S.C. § 6103. Although the law currently allows for the disclosure of such information to non-Treasury personnel in emergency circumstances, there is no terrorism-specific exception. This section amends § 6103 to permit disclosure of IRS-maintained information to any Federal agency investigation or responding to terrorist acts, and to State and local law enforcement agencies that are part of a joint investigative team with the Federal agency.

There is currently no mechanism for the release of tax information to Department of Justice personnel involved in counterterrorism investigations, nor a mechanism to allow those Treasury Department components involved in counterterrorism analysis to disseminate such information to the intelligence community. This section further amends § 6103 to allow for the release of tax information to Department of Justice and Department of Treasury personnel involved in counterterrorism investigations and analysis, and to permit this information to be disseminated to the intelligence community.

Section 406. Restraint of Property Subject to Criminal Forfeiture

Following the conviction in a criminal case, a court may order the forfeiture of property traceable to the offense, or it may enter a judgment in favor of the government for the value of that property if the traceable property is unavailable. *United States v. Candelaria-Silva,* 166 F.3d 19 (1st Cir. 1999) (criminal forfeiture order may take several forms: money judgment, directly forfeitable property, and substitute assets). To make such post-conviction remedies effective, it is necessary for the court to be able to restrain assets pre-trial so that they are available, in the event of conviction, to satisfy the forfeiture judgment.

This section slightly expands the scope of the property that may be restrained pre-trial to ensure that there are sufficient assets to satisfy a judgment. Although some courts interpret current law to allow pre-trial restraint of non-traceable assets, see *In Re Billman,* 915 F.2d 916 (4th Cir. 1990), others only permit the government to restrain assets themselves traceable to the offense, see *United States v. Gotti,* 155 F.3d 144 (2d Cir. 1998). The proposed amendment would recognize that many assets are "fungible," and assist the government's ability to deprive terrorists of their assets without proving the assets they are able to locate are themselves traceable to the offense. Without this amendment, in courts that take the narrower view of the law, the government is unable to preserve the assets of major crime figures during the trial to ensure that they are available to satisfy a judgment in the event of a conviction. *See Gotti, supra* (vacating pre-trial order restraining assets of organized crime leader).

This section would permit pretrial restraint of substitute assets only in criminal forfeiture cases, and only after a grand jury has found probable cause to believe an offense giving rise to a forfeiture has been committed. The property can actually be forfeited to the government only after a petit jury has found the offense proved beyond a reasonable doubt and returned a judgment of conviction. The amendment is made to the Controlled Substances Act because the provisions governing criminal forfeitures in drug cases are incorporated, by statute, into all other criminal forfeiture statutes. 28 U.S.C. § 2461(c).

Section 407. Trade Sanctions Reform Act of 2000

The Trade Sanctions Reform Act of 2000 requires the President to end unilateral agricultural and medical sanctions with respect to foreign entities and governments. This section would authorize Presidential control of agricultural and medical exports to all designated terrorists and narcotics entities wherever they are located. The sec-

tion would authorize the President to retain sanctions with respect to exports of agricultural commodities, medicine and medical devices to designated terrorist entities.

Section 408. Extraterritorial Jurisdiction

Financial crimes admits of no border, utilizing the integrated global financial network for ill purposes. This provision would apply the financial crimes prohibitions to conduct committed abroad, so long as the tools or proceeds of the crimes pass through or are in the United States.

TITLE V—EMERGENCY AUTHORIZATIONS

Section 501. Office of Justice Programs

This provision provides benefits to public safety officers disabled as a result of the September 11 attacks, as well as grants to the States for victim assistance. Consistent with 42 U.S.C. § 3796(b), the Department of Justice's FY2001 appropriations act places an aggregate cap of $2.4 million on the benefits that may be paid to public safety officers who have become totally disabled. A similar cap is found in both House and Senate FY2002 bills. Section 501 removes all caps with respect to officers who were totally disabled as a result of the September 11 attacks. This would authorize OJP annually to pay approximately $120,000 to each totally-disabled officer for life or while he remains totally disabled. In the same way, the Department of Justice's existing grant programs to assist States in aiding crime victims provide mechanisms to respond to the attacks, 42 U.S.C. § 10603b, but the amounts available to meet the need are insufficient. Section 501 would authorize the spending of up to $700 million from balances in the Crime Victims Fund (currently $1.4 billion) to assist States in their victim-relief efforts. The $700 million could be dispatched almost immediately to the States affected by the terrorist attacks, providing them with resources to supplement their own expenditures in aid of the victims.

Current law limits OJP's authority to work directly with service providers (as opposed to governments) under the circumstances created by the September 11 attacks, and to coordinate and manage emergency-response and other activities of its various components. 42 U.S.C. § 10603b(b). The law also is unclear as to proper execution of certain aspects of the Public Safety Officers Benefits program. Section 501 would amend OJP's authorities in these areas, specifically by authorizing OJP to work directly with service providers, in addition to governmental entities, to expedite terrorism victim relief efforts, by enhancing its authority to co-ordinate and manage emergency-response and other activities of its various components, and by clarifying provisions governing the provision of public safety officer benefits.

Section 502. Attorney General's Authority to Pay Rewards

Section 106 of the FY2001 DOJ appropriations act places a per-reward cap of $2 million (and a $10 million annual aggregate cap) on rewards that the Attorney General may offer. A similar cap is found in both House and Senate FY2002 bills. Given the increasing sophistication of terrorist acts, these limitations may hamper the Justice Department's ability to bring the guilty to justice. Section 502 therefore would remove these caps. It would authorize the Attorney General to offer or pay rewards of any amount he or the President determines to be necessary for information or assistance.

Section 503. Limited Authority to Pay Overtime

For the past several years the Department of Justice Appropriations Acts have included provisions whereby Immigration and Naturalization Service funds could not be used to pay employees overtime pay in an amount in excess of $30,000 during a calendar year. In light of recent national emergencies, this section will lift this cap in order to give the Attorney General flexibility in determining whether to authorize overtime if necessary. The Department anticipates that the Attorney General will issue Departmental guidance regarding when it is appropriate to authorize overtime pay in an amount that would exceed the limitations that have been lifted.

Section 504. Secretary of State's Authority to Pay Rewards

This section amends section 36 of the State Department's Basic Authorities Act of 1956 to enhance the ability of the Department of State to pay rewards to assist in bringing terrorists to justice. The section would expand the bases for which the Department could authorize payment of terrorism rewards, eliminate the overall limitation on the amount of funds that can be appropriated to the Department to carry out the rewards program, and eliminate the requirement that the Department distribute funds equally for the purpose of preventing acts of international terrorism

and narcotics trafficking. This section also raises the amount the Department could offer and pay under the program from $5M to $10M and allows the Secretary to authorize payment of an award larger than $10M if the Secretary determines that doing so would be important to the national security interests of the United States.

Section 505. Assistance to Countries Cooperating Against International Terrorism

Subsection (a) of this provision would give important new extraordinary authority for five years to the President to provide assistance or take other beneficial actions in favor of countries that support U.S. efforts to fight international terrorism. Subsection (b) would allow the President to provide anti-terrorism assistance to entities, as well as countries, without being subject to any restrictions. Subsection (c) allows the President to provide assistance for non-proliferation and export control activities without restrictions.

107TH CONGRESS

1ST SESSION

H.R. _____

To combat terrorism and defend the Nation against terrorist acts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September ___, 2001

A BILL

To combat terrorism and defend the Nation against terrorist acts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This act may be cited as the "Anti-Terrorism Act of 2001."

SEC. 2. TABLE OF CONTENTS.

The following is the table of contents for this Act:

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

TITLE I--INTELLIGENCE GATHERING

Subtitle A--Electronic Surveillance

SEC. 101. MODIFICATION OF AUTHORITIES RELATING TO USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES.

(a) GENERAL LIMITATION ON USE BY GOVERNMENTAL AGENCIES- Section 3121(c) of title 18, United States Code, is amended–

(1) by inserting "or trap and trace device" after "pen register";

(2) by inserting ", routing, addressing," after "dialing"; and

(3) by striking "call processing" and inserting "the processing and transmitting of wire and electronic communications".

(b) ISSUANCE OF ORDERS–

(1) IN GENERAL- Subsection (a) of section 3123 of title 18, United States Code, is amended to read as follows:

"(a) IN GENERAL- (1) Upon an application made under section 3122(a)(1), the court shall enter an ex-parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order shall, upon service thereof, apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order.

"(2) Upon an application made under section 3122(a)(2), the court shall enter an ex-parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law-enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.".

(2) CONTENTS OF ORDER- Subsection (b)(1) of section 3123 of title 18, United States Code, is amended–

(A) in subparagraph (A)--

(i) by inserting "or other facility" after "telephone line"; and

(ii) by inserting before the semicolon at the end "or applied"; and

(B) by striking subparagraph (C) and inserting the following new subparagraph (C):

"(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and".

(3) NON-DISCLOSURE REQUIREMENTS- Subsection (d)(2) of section 3123 of title 18, United States Code, is amended–

(A) by inserting "or other facility" after "the line"; and

(B) by striking ", or who has been ordered by the court" and inserting "or applied, or who is obligated by the order".

(c) DEFINITIONS–

(1) COURT OF COMPETENT JURISDICTION- Paragraph (2) of section 3127 of title 18, United States Code, is amended by striking subparagraph (A) and inserting the following new subparagraph (A):

"(A) any district court of the United States (including a magistrate judge of such a court) or any United States Court of Appeals having jurisdiction over the offense being investigated; or".

(2) PEN REGISTER - Paragraph (3) of section 3127 of title 18, United States Code, is amended–

(A) by striking "electronic or other impulses" and all that follows through "is attached" and inserting "dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted"; and

(B) by inserting "or process" after "device" each place it appears.

(3) TRAP AND TRACE DEVICE- Paragraph (4) of section 3127 of title 18, United States Code, is amended–

(A) by inserting "or process" after "a device"; and

(B) by striking "of an instrument" and all that follows through the end and inserting "or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication;".

SEC. 102. SEIZURE OF VOICE-MAIL MESSAGES PURSUANT TO WARRANTS.

Title 18, United States Code, is amended–

(1) in section 2510 –

(A) in subsection (1), by striking all the words after "commerce"; and

(B) in subsection (14), by inserting "wire or" after "transmission of"; and

(2) in section 2703(a) and (b)--

(A) by replacing "Contents of electronic" with "Contents of wire or electronic" every place it occurs;

(B) by replacing "contents of an electronic" with "contents of a wire or electronic" every place it occurs; and

(C) by replacing "any electronic" with "any wire or electronic" every place it occurs; and

(D) by replacing "communication," with "communication (including any electronic storage of such wire communication),".

SEC. 103. AUTHORIZED DISCLOSURE.

Section 2510(7) of title 18, United States Code, is amended by adding ", and (for purposes only of section 2517) any officer or employee of the executive branch of the federal government" after "such offenses".

SEC. 104. SAVINGS PROVISION.

Section 2511(2)(f) of title 18, United States Code, is amended–

(1) by replacing "or chapter 121" with ", chapter 121, or chapter 206"; and

(2) by replacing "wire and oral" with "wire, oral, and electronic".

SEC. 105. USE OF WIRETAP INFORMATION FROM FOREIGN GOVERNMENTS.

Chapter 119 of title 18, United States Code, is amended–

(1) by adding a new section 2514, as follows:

"2514. Use of extraterritorial interceptions by foreign governments.

"(1) Information lawfully received under United States law from the interception of wire, oral or electronic communications outside the United States by a foreign government or a person acting at the direction thereof–

"(a) without the knowing participation of any officer or employee of the United States or person acting at the direction thereof; or

"(b) with such participation, but under circumstances in which such interception was lawful under the laws of the nation in which occurred,

shall be admissible, and the United States may disclose the information (or derivative information therefrom) in any proceeding held under the authority of the United States or any state or political subdivision thereof.

"(2) Information described in subsection (1) the government alleges could affect the national security shall have no less protection than that afforded by law to confidential informants."

"(3) Nothing in this section shall be construed to impair or otherwise affect the authority of the Director of Central Intelligence under the National Security Act of 1947 to protect intelligence sources and methods from unauthorized disclosure."

(2) in the chapter analysis, by inserting before the item relating to section 2515 the following:

"2514. Use of extraterritorial interceptions by foreign governments.".

SEC. 106. INTERCEPTION OF COMPUTER TRESPASSER COMMUNICATIONS.

Chapter 119 of title 18, United States Code, is amended–

(1) in section 2510–

(A) in subsection (17), by striking "and" at the end;

(B) in subsection (18), by replacing the period with a semi-colon; and

(C) by adding after subsection (18), two new subsections as follows:

"(19) 'protected computer' has the meaning set forth in section 1030; and

"(20) 'computer trespasser' means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer."; and

(2) in section 2511(2), by adding after paragraph (h) a new paragraph as follows:

"(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser, if–

"(A) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

"(B) the person acting under color of law is lawfully engaged in an investigation;

"(C) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and

"(D) such interception does not acquire communications other than those transmitted to or from the computer trespasser.".

SEC. 107. SCOPE OF SUBPOENAS FOR RECORDS OF ELECTRONIC COMMUNICATIONS.

Section 2703(c)(1)(C) of title 18, United States Code, is amended--

(1) by replacing "name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service" with the following:

"(i) name;

"(ii) address;

"(iii) local and long distance telephone connection records, or records of session times and durations;

"(iv) length of service (including start date) and types of service utilized;

"(v) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

"(vi) means and source of payment (including any credit card or bank account number)"; and

(2) by striking "and the types of services the subscriber or customer utilized," after "of a subscriber to or customer of such service,".

SEC. 108. NATIONWIDE SERVICE OF SEARCH WARRANTS FOR ELECTRONIC EVIDENCE.

Chapter 121 of title 18, United States Code, is amended–

(1) in section 2703, by striking "under the Federal Rules of Criminal Procedure" every place it appears and inserting "using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation"; and

(2) in section 2711–

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by replacing the period with "; and"; and

(C) by adding the following new paragraph at the end:

"(3) the term 'court of competent jurisdiction' has the meaning assigned by section 3127, and includes any federal court within that definition, without geographic limitation.".

SEC. 109. CLARIFICATION OF SCOPE.

Section 2511(2) of title 18, United States Code, as amended by section 106(2) of this Act, is further amended by adding at the end a new paragraph as follows:

"(j) Nothing contained in section 631 of the Act of June 19, 1934 (47 U.S.C. 551) shall be deemed to restrict voluntary or obligatory disclosures of information pursuant to the provisions of this chapter, chapter 121, or chapter 206, except that such disclosures shall not include records revealing customer cable television viewing activity.".

SEC. 110. EMERGENCY DISCLOSURE OF ELECTRONIC COMMUNICATIONS TO PROTECT LIFE AND LIMB.

(a) Section 2702 of title 18, United States Code, is amended–

(1) by amending the heading to read, "Voluntary disclosure of customer communications or records";

(2) in subsection (a)(2)(B) by replacing the period with "; and";

(3) by adding after subsection (a)(2) a new paragraph as follows:

"(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2)) to any governmental entity.";

(4) in subsection (b) by striking "Exceptions.–A person or entity" and inserting "Exceptions for disclosure of communications.–A provider described in subsection (a)";

(5) in subsection (b)(6)–

(A) in subparagraph (A)(ii), by striking "or";

(B) in subparagraph (B), by replacing the period with "; or"; and

(C) by inserting after subparagraph (B) a new subparagraph as follows:

"(C) if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay."; and

(6) by adding after subsection (b) a new subsection as follows:

"(c) Exceptions for disclosure of customer records.–A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))--

(1) as otherwise authorized in section 2703;

(2) with the lawful consent of the customer or subscriber;

(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(4) to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

(5) to any person other than a governmental entity.".

(b) Section 2703 of title 18, United States Code, is amended--

(1) by amending the section heading to read, "Required disclosure of customer communications or records".

(2) by redesignating subsection (c)(2) as (c)(3);

(3) in subsection (c)(1)--

(A) by striking "(A) Except as provided in subparagraph (B), a provider of electronic communication service may" and inserting "A governmental entity may require a provider of electronic communication service or remote computing service to";

(B) by striking "covered by subsection (a) or (b) of this section) to any person other than a governmental entity." and inserting a close parenthesis;

(C) by striking "(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity";

(D) by redesignating subparagraph (C) as subsection (c)(2);

(E) by redesignating subparagraph (B)(i) as (A), (B)(ii) as (B), (B)(iii) as (C), and (B)(iv) as (D);

(F) in subparagraph (D) (formerly (B)(iv)) by striking the final period and inserting "; or"; and

(G) by inserting after subparagraph (D) (formerly (B)(iv)) the following subparagraph:

"(F) seeks information pursuant to paragraph (2).".

Subtitle B--Foreign Intelligence Surveillance and Other Information

SEC. 151. PERIOD OF ORDERS OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS UNDER FOREIGN INTELLIGENCE SURVEILLANCE.

(a) The Foreign Intelligence Surveillance Act of 1978 is amended by adding "or an agent of a foreign power, as defined in section 101(b)(1)(A),"–

(1) in section 105(e)(1) (50 U.S.C. 1805(e)(1)), after "or (3),"; and

(2) in section 304(d)(1) (50 U.S.C. 1824(d)(1)), after "101(a),".

(b) Section 304(d)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824(d)(1)) is amended by replacing "forty-five" with "ninety."

SEC. 152. MULTI-POINT AUTHORITY.

Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by inserting ", or, in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons," after "specified person".

SEC. 153. FOREIGN INTELLIGENCE INFORMATION.

The Foreign Intelligence Surveillance Act of 1978 is amended by replacing "that the" with "that a"--

(1) in section 104(a)(7)(B) (50 U.S.C. 1804(a)(7)(B)); and

(2) in section 303(a)(7)(B) (50 U.S.C. 1823(a)(7)(B)).

SEC. 154. FOREIGN INTELLIGENCE INFORMATION SHARING.

Notwithstanding any other provision of law, it shall be lawful for foreign intelligence information obtained as part of a criminal investigation (including, without limitation, information subject to Rule 6(e) of the Federal Rules of Criminal Procedure and information obtained pursuant to chapter 119 of title 18, United States Code) to be provided to any federal law-enforcement, intelligence, protective, or national-defense personnel, to any federal personnel responsible for administering the immigration laws of the United States, or to any officer named in section 19 of title 3 of the United States Code.

SEC. 155. PEN REGISTER AND TRAP AND TRACE AUTHORITY.

Section 402(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is amended–

(1) at the end of paragraph (1), by adding "and";

(2) in paragraph (2)--

(A) by inserting "from the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device" after "obtained"; and

(B) by replacing all the matter after "General" with a period; and

(3) by striking paragraph (3).

SEC. 156. BUSINESS RECORDS.

The Foreign Intelligence Surveillance Act of 1978 is amended–

(1) in section 501 (50 U.S.C. 1861), by amending the same to read as follows:

"§ 501. Administrative subpoenas.

"(a) In any investigation to gather foreign intelligence information or an investigation concerning international terrorism, which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General may approve pursuant to Executive Order 12333 (or a successor order), the Attorney General may, by administrative subpoena, require the production of any tangible things (including books, records, papers, documents, and other items) that are relevant to the investigation.

"(b) A person who, in good faith, produces tangible things under a subpoena issued pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context."; and

(2) by striking section 502 (50 U.S.C. 1862).

SEC. 157. MISCELLANEOUS NATIONAL-SECURITY AUTHORITIES.

(a) Section 2709(b) of title 18, United States Code, is amended--

(1) by inserting "at Bureau headquarters or Special Agent in Charge in Bureau field offices" before ", may" the first place it occurs;

(2) in paragraph (1)--

(A) by replacing "the Director" and all that follows through "Director)" with "he";

(B) by inserting ", or electronic communication transactional records" after "toll billing records"; and

(C) by replacing "made that" and all that follows through the end with "made that the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and"; and

(3) in paragraph (2)--

(A) by replacing "the Director" and all that follows through "Director)" with "he"; and

(B) by replacing "made that" and all that follows through the end with "made that the information sought is relevant to an authorized foreign counterintelligence investigation.".

(b) Section 1114(a)(5)(A) of Public Law 95-630 (12 U.S.C. 3414(a)(5)(A)) is amended--

(1) by inserting "in a position not lower than Deputy Assistant Director at Bureau headquarters or Special Agent in Charge in Bureau field offices" after "designee"; and

(2) by striking all the matter following "purposes" up to the period; and

(c) Section 624 of Public Law 90-321 (15 U.S.C. 1681u) is amended--

(1) in subsection (a)--

(A) by inserting "in a position not lower than Deputy Assistant Director at Bureau headquarters or Special Agent in Charge in Bureau field offices" after "designee" the first place it appears; and

(B) by replacing "writing that" and all that follows through the end with "writing that such information is necessary for the conduct of an authorized foreign counterintelligence investigation.";

(2) in subsection (b)--

(A) by inserting "(in a position not lower than Deputy Assistant Director at Bureau headquarters or Special Agent in Charge in Bureau field offices)" after "designee" the first place it appears; and

(B) by replacing "writing that" and all that follows through the end with "writing that such information is necessary for the conduct of an authorized foreign counterintelligence investigation."; and

(3) in subsection (c)--

(A) by inserting "(in a position not lower than Deputy Assistant Director at Bureau headquarters or Special Agent in Charge in Bureau field offices)" after "designee"; and

(B) by replacing "camera that" and all that follows through "States." with "camera that the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation.".

SEC. 158. DISCLOSURE OF EDUCATIONAL RECORDS.

(a) Section 408 of the National Education Statistics Act of 1994 (20 U.S.C. 9007) is amended by adding after subsection (b) a new subsection as follows:

"(c) Without regard to subsections (a) and (b), the Attorney General or the Secretary of Education (or any Federal officer or employee designated by either of them) may, upon determining that so doing can reasonably be expected to assist in investigating or preventing a Federal terrorism offense as defined in section 25 of title 18, United States Code, or domestic terrorism or international terrorism as defined in section 2331 of that title–

"(1) collect, through legal process or as otherwise authorized by law, reports, records, and information (including individually-identifiable information), in the Center's possession; and

(2) for official purposes, retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such reports, records, or information as otherwise authorized by law, consistent with such guidelines as the Attorney General, after consultation with the Secretary of Education, may issue to protect confidentiality.

No person furnishing reports, records, or information pursuant to this subsection shall be liable to any other person for furnishing such information.".

(b) Section 444 of the General Education Provisions Act (20 U.S.C. 1232g), is amended by adding after subsection (i) a new subsection as follows:

"(j) Without regard to subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee designated by him) may, upon determining that so doing can reasonably be expected to assist in investigating or preventing a Federal terrorism offense as defined in section 25 of title 18, United States Code, or domestic terrorism or international terrorism as defined in section 2331 of that title–

"(1) collect education records and other information in the possession of an educational agency or institution; and

(2) for official purposes, retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records or other information as otherwise authorized by law, consistent with such guidelines as the Attorney General, after consultation with the Secretary of Education, may issue to protect confidentiality.

No person furnishing records or information pursuant to this subsection shall be liable to any other person for furnishing such information.".

SEC. 159. PRESIDENTIAL AUTHORITY.

Section 203 of Public Law 95-223 (50 U.S.C. 1702) is amended–

(1) at the end of subparagraph (a)(1)(A), by replacing "; and" with a comma and adding thereafter the following (flush to that subparagraph):

"by any person, or with respect to any property, subject to the jurisdiction of the United States;"

(2) in subparagraph (a)(1)(B)--

(A) by striking "by any person, or with respect to any property, subject to the jurisdiction of the United States.";

(B) by replacing "interest;" with "interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and"; and

(C) by inserting ", block during the pendency of an investigation" after "investigate";

(3) at the end of paragraph (a)(1), by adding a new subparagraph as follows:

"(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized,

aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes."; and

(4) by adding at the end a new subsection (c) as follows:

"(c) Classified information.--In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera."

TITLE II–IMMIGRATION

SEC. 201. DEFINITIONS RELATING TO TERRORISM.

The Immigration and Nationality Act of 1952 is amended–

(a) in Section 212(a)(3) (8 U.S.C. 1182)--

(1) in paragraph (B) -

(A) in clause (i) -

(i) by amending paragraph (IV) to read as follows:

"(IV) is a representative (as defined in clause (iv)) of : (a) a foreign terrorist organization, as designated by the Secretary under section 219, or (b) a political, social or other similar group whose public endorsement of acts of terrorist activity the Secretary has determined undermines U.S. efforts to reduce or eliminate terrorist activities, or";

(ii) in paragraph (V) by inserting "or" after the comma following "…should have known is a terrorist organization"; and

(iii) by adding new paragraphs (VI) and (VII) to read as follows:

"(VI) has used his or her position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines U.S. efforts to reduce or eliminate terrorist activities; or

(VII) is the spouse or child of an alien who is inadmissible under this section, if the activity causing the alien to be found inadmissible occurred within the last 5 years,";

(B) in clause (ii)--

(i) by inserting "it had been" before "committed in the United States"; and

(ii) by replacing "or firearm" with ", firearm, or other weapon or dangerous device";

(C) by amending clause (iii) to read as follows:

"(iii) Engage in terrorist activity defined

"As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization--

"(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, an act of terrorist activity;

"(II) to prepare or plan a terrorist activity;

"(III) to gather information on potential targets for terrorist activity;

"(III) to solicit funds or other things of value for terrorist activity or for any terrorist organization;

"(IV) to solicit any individual for membership in a terrorist organization or to engage in a terrorist activity; or

"(V) otherwise to commit an act that the actor knows, or reasonably should know, affords material support (including, without limitation, a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including, without limitation, chemical, biological, and radiological weapons), explosives, or training), to any organization that the actor knows, or reasonably should know, is a terrorist organization, or to any individual whom the actor knows, or reasonably should know, has committed or plans to commit any terrorist activity.

"This clause shall not be construed to encompass any material support the alien affords to an individual who had previously committed terrorist activity if the alien establishes by clear and convincing evidence that such support was afforded only after that individual had permanently and publicly renounced and rejected the use of, and had ceased to commit or support, any terrorist activity."; and

(2) by adding a new subparagraph (F) as follows:

"Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.";

(b) in Section 219(a) (8 U.S.C. 1189(a))--

(A) in subparagraph (1)(B), by inserting "or terrorism (as defined in section 140(d)(2) of the State Department Authorization Act, Public Law 100-204 (22 U.S.C. 2656f(d)(2)) or retains the capability and intent to engage in terrorist activity or terrorism)" after "212(a)(3)(B))";

(B) in subparagraph (1)(C), by inserting "or terrorism" after "terrorist activity";

(C) by amending subparagraph (2)(A) to read as follows:

"(A) NOTICE.—

"(i) Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate an organization under this subsection, together with

the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

"(ii) The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).";

(D) in clause (2)(B)(i), by replacing "subparagraph (A)" with "subparagraph (A)(ii)";

(E) in subparagraph (2)(C), by replacing "paragraph (2)" with "paragraph (2)(A)(i)";

(F) in subparagraph (3)(B), by replacing "subsection (c)" with "subsection (b)";

(G) in subparagraph (4)(B), by inserting after the first sentence the following: "The Secretary also may redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.";

(H) in subparagraph (6)(A),

(i) by inserting "or a redesignation made under paragraph (4)(B)" after "paragraph (1)";

(ii) in clause (i), by

(I) inserting "or redesignation" after "designation" the first time it appears; and

(II) striking "of the designation"; and

(iii) in clause (ii), by striking "of the designation";

(*I*) in subparagraph (6)(B), by

(i) replacing "through (4)" with "and (3)"; and

(ii) inserting the following new sentence at the end: "Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.";

(J) in paragraph (7), by inserting ", or the revocation of a redesignation under paragraph (6)," after "paragraph (5) or (6)"; and

(K) in paragraph (8), by

(i) replacing "paragraph (1)(B)" with "paragraph (2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)";

(ii) inserting "or an alien in a removal proceeding" after "criminal action"; and

(iii) inserting "or redesignation" before "as a defense".

SEC. 202. MANDATORY DETENTION OF SUSPECTED TERRORISTS.

Section 236 of the Immigration and Nationality Act is amended–

(1) by redesignating subsection (e) as (f) and by inserting before the same the following new subsection:

"(e) Detention of Terrorist Aliens.--

"(1) Custody.--The Attorney General shall take into custody any alien who is certified under paragraph (3).

"(2) Release.--The Attorney General shall maintain custody of any such alien until such alien is removed from the United States. Such custody shall be maintained

irrespective of any relief from removal the alien may be eligible for or granted until the Attorney General deems such alien is no longer an alien who may be certified pursuant to paragraph (3).

"(3) Certification.--The Attorney General may certify an alien to be an alien he has reason to believe may commit, further, or facilitate acts described in section 237(a)(4)(A)(i), (A)(iii), or (B), or engage in any other activity that endangers the national security of the United States.".

SEC. 203. HABEAS CORPUS AND JUDICIAL REVIEW.

Section 236 of the Immigration and Nationality Act is amended by adding the following new subsection (g):

"(g) Habeas corpus.– Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, judicial review of any issue arising out of the detention of any alien under section 236(e) of this Act may be had only by petition for writ of habeas corpus in the United States District Court for the District of Columbia, without regard to where the alien is detained.".

SEC. 204. APPLICABILITY.

Notwithstanding any other provision of law, the amendments made by this title shall apply to all aliens, regardless of whether any such aliens entered the United States before or after the date of the enactment of this Act, or whether any relevant activity by any such aliens occurred before or after such date, and shall apply to all past, pending, or future deportation, exclusion, removal, or other immigration proceedings.

SEC. 205. MULTILATERAL CO-OPERATION AGAINST TERRORISTS.

Section 222(f) of the Immigration and Nationality Act of 1952 is amended–

(A) by inserting ": (1)" after "except that"; and

(B) by inserting the following before the period at the end:

"and (2) the Secretary of State in his discretion and on the basis of reciprocity may provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database:

(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating or punishing, acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons or illicit weapons; or

(B) with regard to any or all aliens in the database, pursuant to such conditions as he shall establish in an agreement with another government in which that government agrees to use such information and records for the purposes described in paragraph (A) or to deny visas to persons who would be inadmissible to the United States.".

SEC. 206. INTER-AGENCY DATA SHARING.

(a) Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105), is amended–

(1) in the caption by adding "**and Data Exchange**" after "**Officers**";

(2) by designating all of section 105 as subsection (a);

(3) in subsection (a) as so designated, by inserting the words "and border" after the word "internal" in the second place that it appears; and

(4) by adding new subsections (b), (c) and (d) as follows:

"(b) The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service with access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the

National Crime Information Center that may be mutually agreed upon by the Attorney General and the agency to be provided access for the purpose of determining whether a visa applicant or applicant for admission has a criminal history record indexed in any such file. Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge. The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon. Upon receipt of such updated extracts, the reviewing agency shall make corresponding updates to its database and destroy previously provided extracts. Such access to any extract does not entitle the Department of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

"(c) The provision of the extracts mentioned in subsection (b) may be reconsidered by the Attorney General and the receiving agency upon the development and deployment of a more cost-effective and efficient means of sharing the information.

"(d) For purposes of administering this Section, the Department of State shall, prior to receiving access to National Crime Information Center data, promulgate final regulations to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order-

"(1) to limit the redissemination of such information;

"(2) to ensure that such information is used solely to determine whether to issue a visa to an individual;

"(3) to ensure the security, confidentiality and destruction of such information; and

"(4) to protect any privacy rights of individuals who are subjects of such information.".

(b) Nothing in this section shall be construed to limit such authority as the Attorney General or the Director of the Federal Bureau of Investigation may have pursuant to other law (and procedures thereunder) to provide access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), or to any other information maintained by the NCIC, to any Federal agency or officer authorized to enforce or administer the immigration laws of the United States for the purpose of such enforcement or administration, upon terms that are consistent with such other law.

Title III--CRIMINAL JUSTICE

Subtitle A-Substantive Criminal Law

SEC. 301. NO STATUTE OF LIMITATION FOR PROSECUTING TERRORISM OFFENSES.

(a) IN GENERAL.- Section 3286 of title 18, United States Code, is amended to read as follows:

"§ 3286. Terrorism offenses

"Notwithstanding any other provision of law, an indictment may be found or an information instituted for any Federal terrorism offense at any time without limitation.".

(b) CONFORMING AMENDMENT.-The analysis for chapter 213 of title 18, United States Code, is amended by amending the item relating to section 3286 to read as follows:

"3286. Terrorism offenses.".

(c) APPLICATION.--The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of enactment of this section.

SEC. 302. ALTERNATIVE MAXIMUM PENALTIES FOR TERRORISM CRIMES.

Section 3559 of title 18, United States Code, is amended by adding after subsection (d) the following new subsection:

"(e) Authorized terms of imprisonment for terrorism crimes. - A person convicted of any Federal terrorism offense may be sentenced to imprisonment for any term of years or for life, notwithstanding any maximum term of imprisonment specified in the law describing the offense. The authorization of imprisonment under this subsection is supplementary to, and does not limit, the availability of any other penalty authorized by the law describing the offense, including the death penalty, and does not limit the applicability of any mandatory minimum term of imprisonment, including any mandatory life term, provided by the law describing the offense.".

SEC. 303. PENALTIES FOR TERRORIST CONSPIRACIES.

Chapter 113B of title 18, United States Code, is amended-

(1) by inserting after section 2332b the following:

"§ 2332c. Attempts and conspiracies

"Any person who attempts or conspires to commit any Federal terrorism offense shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."; and

(2) in the analysis for the chapter, by inserting after the item relating to section 2332b the following:

"2332c. Attempts and conspiracies.".

SEC. 304. TERRORISM CRIMES AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended-

(1) by striking "or (F)" and inserting "(F)"; and

(2) by replacing "financial gain;" with "financial gain, or (G) any act that is indictable as a Federal terrorism offense;".

SEC. 305. BIOLOGICAL WEAPONS.

(a) Chapter 10 of title 18, United States Code is amended-

(1) in section 175-

(A) in subsection (b)-

(i) by striking, "section, the"and inserting "section - (1) the";

(ii) by striking "does not include" and inserting "includes";

(iii) by inserting "other than" after "system for"; and

(iv) by striking "purposes." and inserting the following: "purposes, and (2) the terms 'biological agent' and 'toxin' do not encompass any biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.";

(B) by redesignating subsection (b) as (c); and

(C) after subsection (a), by adding a new subsection as follows:

"(b) Additional offense.-Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both. Knowledge of whether the type or quantity of any biological agent, toxin, or delivery system is reasonably justified by a peaceful purpose is not an element of the offense.";

(2) after section 175a, by adding a new section as follows:

"§ 175b. Possession by restricted persons

"(a) No person described in section 922(g) shall ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a 'select agent' in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132), and is not exempted under subsection (h) of such section 72.6, or appendix A of part 72 of such title; except that the term "select agent" does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source. The prohibition of this section shall also apply to an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination (that remains in effect) that such country has repeatedly provided support for acts of international terrorism.

"(b) Whoever knowingly violates this section shall be fined as provided in this title, imprisoned not more than ten years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized governmental activity under title V of the National Security Act of 1947."; and

(3) in the chapter analysis, by inserting after the item relating to section 175a the following:

"175b. Possession by restricted persons.".

(b) The Anti-Terrorism and Effective Death Penalty Act of 1996 is amended by adding a new subsection after subsection 511 (42 U.S.C. 262 note) as follows:

"**§ 511A. Regulation of biological agents posing national-security threat**

"(a) IN GENERAL.--

"(1) LIST OF AGENTS POSING SECURITY THREAT.--The Secretary shall, through regulations promulgated under subsection (d), establish and maintain a list of those biological agents listed pursuant to section 511(d)(1) that he determines to be a national-security threat.

"(2.) CRITERIA.--In determining whether to include an agent on the list under paragraph (1), the Secretary shall–

"(A) consider the criteria specified in section 511(d)(1)(B)(i), and any other criteria that he determines to be appropriate; and

"(B) consult with scientific, intelligence, and military experts representing appropriate professional groups.

"(b) REGULATION OF BIOLOGICAL AGENTS POSING SECURITY THREAT.--The Secretary shall, through regulations promulgated under subsection (d), provide for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of agents listed under subsection (a)(1) designed to protect public safety and national security, including safeguards to prevent access to such agents for use in domestic terrorism or international terrorism or for any other criminal purpose.

"(c) CIVIL MONEY PENALTIES.--A violation of a requirement imposed by regulation promulgated under this section shall be subject to a civil money penalty of up to $250,000.

"(d) REGULATIONS.--The Secretary shall promulgate regulations to carry out this section. The initial regulations implementing this section shall be issued as interim final regulations.

SEC. 306. SUPPORT OF TERRORISM THROUGH EXPERT ADVICE OR ASSISTANCE.

Section 2339A of title 18, United States Code, is amended–

(1) in subsection (a)--

(A) by striking "a violaton" and all that follows through "49" and inserting "any Federal terrorism offense"; and

(B) by replacing "violation," with "offense,"; and

(2) in subsection (b), by inserting "expert advice or assistance," after "training,".

SEC. 307. PROHIBITION AGAINST HARBORING TERRORISTS.

Section 792 of title 18, United States Code, is amended–

(1) by inserting "or a Federal terrorism offense," before "shall be fined"; and

(2) by inserting at the end: "There is extraterritorial Federal jurisdiction over any violation (including, without limitation, conspiracy or attempt) of this section. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.".

SEC. 308. POST-RELEASE SUPERVISION OF TERRORISTS.

Section 3583 of title 18, United States Code, is amended by adding at the end the following:

"(j) Supervised release terms for terrorism offenses. – Notwithstanding subsection (b), the authorized terms of supervised release for any Federal terrorism offense are any term of years or life.".

SEC. 309. DEFINITIONS.

(a) Chapter 1 of title 18, United States Code, is amended–

(1) by adding after section 24 a new section as follows:

"**§ 25. Federal terrorism offense defined**

"As used in this title, the term 'Federal terrorism offense' means a violation of, or an attempt or conspiracy to violate–

"(a) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175, 175b (relating to biological weapons), 229 (relating to chemical weapons), 351 (relating to congressional, cabinet, and Supreme Court assassination, kidnapping, and assault), 792 (relating to harboring terrorists), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(e) (relating to certain bombings), 844(f) or (i) (relating to arson and bombing of certain property), 930(c), 956 (relating to conspiracy to injure property of a foreign government), 1030(a)(1), (a)(4), (a)(5)(A), or (a)(7) (relating to protection of computers), 1114 (relating to protection of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to injury of Government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366 (relating to destruction of an energy facility), 1751 (relating to Presidential and Presidential staff assassination, kidnapping, and assault), 1992, 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2332c,

2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture);

"(b) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);

"(c) section 601 (relating to disclosure of identities of covert agents) of the National Security Act of 1947 (50 U.S.C. 421); or

"(d) section 46502 (relating to aircraft piracy), section 46504 (relating to interference with a flight crew), section 46505 (relating to carrying a weapon or explosive on aircraft), section 46506 (relating to application of certain criminal laws to acts on aircraft), or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49."; and

(2) in the chapter analysis, by inserting after the item relating to section 24 the following:

"25. Federal terrorism offense defined.".

(b) Section 2332b(g)(5)(B) of title 18, United States Code, is amended by striking "is a violation" and all that follows through "title 49" and inserting "is a Federal terrorism offense".

(c) Section 2331 of title 18, United States Code, is amended –

(1) in paragraph (1)(B)--

(i) by inserting "(or to have the effect)" after "intended"; and

(ii) in clause (iii), by replacing "by assassination or kidnapping" with "(or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof)";

(2) in paragraph (3), by striking "and";

(3) in paragraph (4), by replacing the period with "; and"; and

(4) by inserting the following after paragraph (4):

"(5) the term 'domestic terrorism' means activities that –

"(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; and

"(B) appear to be intended (or to have the effect) --

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government (or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof).".

Subtitle B–Criminal Procedure

SEC. 351. SINGLE-JURISDICTION SEARCH WARRANTS FOR TERRORISM.

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after "executed" the following: "and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of title 18, United States Code), by a federal magistrate judge in any district in which activities related to the terrorism may have occurred, for a search of property or for a person within or outside the district".

SEC. 352. NOTICE.

Section 3103a of title 18, United States Code, is amended by adding at the end the following: "With respect to any issuance of a warrant or court order under this section, or any other law or rule, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed pursuant to the standards, terms, and conditions set forth in section 2705, unless otherwise expressly provided by statute.".

SEC. 353. DNA IDENTIFICATION OF TERRORISTS.

Section 3(d)(1) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)(1)) is amended–

(1) by redesignating subparagraph (G) as subparagraph (H); and

(2) by inserting after subparagraph (F) a new subparagraph as follows:

"(G) Any Federal terrorism offense (as defined in section 25 of title 18, United States Code).".

SEC. 354. GRAND JURY MATTERS.

Rule 6(e)(3)(A) of the Federal Rules of Criminal Procedure is amended–

(1) by striking "and" at the end of subdivision (i);

(2) by replacing the period at the end of subdivision (ii) with "; and"; and

(3) by inserting after subdivision (ii) the following:

"(iii) federal law-enforcement, intelligence, protective, or national-defense personnel, or any federal personnel responsible for administering the immigration laws of the United States, or to any officer named in section 19 of title 3 of the United States Code, where the matters pertain to international terrorism or domestic terrorism (as defined in section 2331 of title 18, United States Code), or a matter of national security.".

SEC. 355. EXTRATERRITORIALITY.

Chapter 113B of title 18, United States Code, is amended–

(1) in the heading, by striking "Exclusive";

(2) by inserting "There is extraterritorial Federal jurisdiction over any Federal terrorism offense and any offense under this chapter." at the beginning; and

(3) in the chapter analysis, by striking "Exclusive" in the item relating to section 2338.

SEC. 356. JURISDICTION OVER CRIMES COMMITTED AT U.S. FACILITIES ABROAD.

Section 7 of title 18, United States Code, is amended by adding the following at the end thereof:

"(9) With respect to offenses committed by or against a United States national, as defined in Section 1203(c) of this title, (A) the premises of United States diplomatic, consular, military or other U.S. Government- missions or entities in foreign states, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership, and (B) residences in foreign states and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities, provided that nothing in this subsection shall be deemed to supercede any treaty or international agreement in force on the date of enactment of this subsection with which this subsection conflicts.

Title IV--FINANCIAL INFRASTRUCTURE

SEC. 401. LAUNDERING THE PROCEEDS OF TERRORISM.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "or 2339B" after "2339A".

SEC. 402. MATERIAL SUPPORT FOR TERRORISM.

Section 2339A of title 18, United States Code, is amended–

(1) in subsection (a), by inserting "A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law." at the end; and

(2) in subsection (b), by replacing "or other financial securities" with "or monetary instruments or financial securities".

SEC. 403. ASSETS OF TERRORIST ORGANIZATIONS.

Section 981(a)(1) of title 18, United States Code, is amended after paragraph (F) by adding the following new paragraph:

"(G) All assets, foreign or domestic--

"(i) of any person, entity or organization engaged in planning or perpetrating any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

"(ii) acquired or maintained by any person for the purpose of supporting, planning, conducting, or concealing an act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or

"(iii) derived from, involved in, or used or intended to be used to commit any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property.".

SEC. 404. TECHNICAL CLARIFICATION RELATING TO PROVISION OF MATERIAL SUPPORT TO TERRORISM.

No provision of title IX of Public Law 106-387 shall be understood to limit or otherwise affect section 2339A or 2339B of title 18, United States Code.

SEC. 405. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL-SECURITY INVESTIGATIONS.

Section 6103 of title 26, United States Code, is amended –

(1) in paragraph (i)(3), by adding a new subparagraph after subparagraph (B) as follows:

"(C) Response to Terrorist Incidents and Threats.– The Secretary may disclose returns or return information to the extent necessary to assist officers or employees of any Federal agency involved in the response to or the investigation of terrorist incidents, threats, or activities; the Federal agency may redisclose information received pursuant to this paragraph to State or local law-enforcement officials who are part of a joint investigative team with the Federal agency.";

(2) in subsection (i), by adding a new paragraph after paragraph (6), as follows:

"(7) Information Concerning Terrorist Activities.--The Secretary may disclose returns and return information, upon a particularized request signed personally by (i) an Assistant Attorney General or person of higher rank in the Department of Justice, or (ii) a person who is responsible for the collection or analysis of intelligence and counterintelligence information concerning terrorist organizations and activities and who is also an official of the Department of Treasury who is appointed by the President with the advice and consent of the Senate or a member of the Senior Executive Service. Information disclosed under this paragraph may be disclosed to employees of the Department of Justice and the Department of the Treasury personally and directly engaged in (and solely for their use in) the collection or analysis of intelligence and counterintelligence information concerning terrorist organizations or activities. Information disclosed under this paragraph may be disclosed to other United States intelligence agencies when relevant to their analysis of intelligence and counterintelligence information concerning terrorist organizations and activities, and thereafter the information so disclosed may be used by such agencies only in accordance with Executive Order 12333 (or successor order).''; and

(3) by adding a new paragraph (a)(11) as follows:

"The term 'terrorism' means international terrorism or domestic terrorism as those terms are defined in section 2331 of Title 18, United States Code.".

SECTION 406. RESTRAINT OF PROPERTY SUBJECT TO CRIMINAL FORFEITURE.

Section 413(e)(1) of the Controlled Substances Act (21 U.S.C. § 853(e)(1)) is amended by inserting "or (p)" after "(a)".

SECTION 407. TRADE SANCTIONS.

The Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX of H.R. 5426, as enacted by section 1(a) of Public Law 106-387) is amended–

(1) in section 902(6)--

(A) by striking "or" at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting "; or"; and

(C) by adding at the end thereof the following new subparagraph:

"(C) a statute, executive order, or regulation imposing such a prohibition, restriction, or condition with respect to a foreign entity designated by the United States in connection with terrorism, narcotics trafficking, or the proliferation of missiles or weapons of mass destruction.";

(2) in section 902(7)–

(A) by striking "or" at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting "; or"; and

(C) by adding at the end thereof the following new subparagraph:

"(C) a statute, executive order, or regulation imposing such a prohibition, restriction, or condition with respect to a foreign entity designated by the United States in connection with terrorism, narcotics trafficking, or the proliferation of missiles or weapons of mass destruction.";

(3) by amending section 904(2)(C) to read as follows:

"(C) used to facilitate the design, development, or production of missiles or weapons of mass destruction.";

(4) in section 906(a)(1)--

(A) by inserting ", the Taliban or the territory of Afghanistan controlled by the Taliban," after "Cuba"; and

(B) by inserting ", or in the territory of Afghanistan controlled by the Taliban," after "within such country"; and

(5) in section 906(a)(2), by inserting ", or to any other entity in Syria or North Korea" after "Korea".

SECTION 408. EXTRATERRITORIAL JURISDICTION.

Section 1029 of Title 18, United States Code, is amended by adding at the end a new paragraph (g) as follows:

"(g) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsections (a) or (b) of this section, shall be subject to the fines, penalties, imprisonment and forfeiture enumerated in this title if–

(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secretes, or holds within the jurisdiction of the United States,

any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.".

Title V--EMERGENCY AUTHORIZATIONS

SEC. 501. OFFICE OF JUSTICE PROGRAMS.

(a) In connection with the airplane hijackings and terrorist acts (including, without limitation, any related search, rescue, relief, assistance, or other similar activities) that occurred on September 11, 2001, in the United States, amounts transferred to the Crime Victims Fund from the Executive Office of the President or funds appropriated to the President shall not be subject to any limitation on obligations from amounts deposited or available in the Fund.

(b) Section 112 of title I of section 101(b) of division A of Public Law 105-277 and section 108(a) of appendix A of Public Law 106-113 (113 Stat. 1501A-20) are amended– (1) after "that Office", each place it occurs, by inserting "(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90-351)"; and (2) by inserting "functions, including any" after "all".

(c) Section 1404B(b) of the Victim Compensation and Assistance Act is amended after "programs" by inserting ", to victim service organizations, to public agencies (including Federal, State, or local governments), and to non-governmental organizations that provide assistance to victims of crime,".

(d) Section 1 of H.R. 2882 of the 107th Congress as enacted is amended in section 1(a) by striking ", (d),", by inserting "(containing sufficient information to permit a proper distribution pursuant to such section 1201(a), where relevant)" before "by a", and by replacing all the matter after "certification," with "benefits under such section 1201(a) and the first year's benefits under such section 1201(b).".

SEC. 502. ATTORNEY GENERAL'S AUTHORITY TO PAY REWARDS.

No reward offered by the Attorney General in connection with hijackings or terrorist acts shall be subject to any per- or aggregate reward spending limitation established by law, unless the same should expressly refer to this section, and no reward paid pursuant to any such offer shall count toward any such aggregate reward spending limitation.

SEC. 503. LIMITED AUTHORITY TO PAY OVERTIME.

The matter under the headings "Immigration And Naturalization Service: Salaries and Expenses, Enforcement And Border Affairs" and "Immigration And Naturalization Service: Salaries and Expenses, Citizenship And Benefits, Immigration And Program Direction" in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106-553 (114 Stat. 2762A-58 to 2762A-59)) is amended by striking the following each place it occurs: "*Provided,* That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:".

SEC. 504. SECRETARY OF STATE'S AUTHORITY TO PAY REWARDS.

Section 36 of the State Department Basic Authorities Act of 1956 (P.L. 885, August 1, 1956; 22 USC 2708) is amended –

(1) in section (b) –

(a) by deleting "or" at the end of paragraph (4);

(b) by adding the following at the end of subsection (5) "including by dismantling an organization in whole or significant part; or"; and

(c) by adding a new paragraph (6) as follows:

"the identification or location of an individual who holds a key leadership position in a terrorist organization."

(2) in section (d), by striking paragraphs (2) and (3) and renumbering paragraph (4) accordingly; and

(3) in section (e)(1), by striking "$5,000,000" and inserting in lieu thereof "$10,000,000, except as personally authorized by the Secretary of State if he determines that offer or payment of an award of a larger amount is important to the national interests of the United States.".

SEC. 505. ASSISTANCE TO COUNTRIES CO-OPERATING AGAINST INTERNATIONAL TERRORISM.

(a) The President may provide assistance or take any other action, sell or authorize the export of defense articles or defense services, or issue credit, credit guarantees or extend other financial assistance, under the Foreign Assistance Act of 1961, the Arms Export Control Act, the Export-Import Bank Act of 1945, or other provisions of law, notwithstanding any other provision of law, if to do so is important to United States efforts to respond to, deter or prevent acts of international terrorism or other actions threatening international peace and security. The authority of this paragraph may be used in Fiscal Years 2002 through 2007.

(b) Section 571 of the Foreign Assistance Act of 1961 is amended as follows:

(1) after "law," strike "that restricts assistance to foreign countries, other than sections 502B and 620A of this Act,";

(2) after "assistance", strike "to foreign countries"; and

(3) after "ability of", strike "their".

(c) Section 582 of the Foreign Assistance Act of 1961 is amended as follows: after "law", delete "other than section 502B or 620A of this Act,".

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